

A Genealogy of War as a Problem of International Politics

Christine Andrä

Thesis submitted in fulfilment of the requirements for the degree of Ph.D.

December 17, 2018

Department of International Politics
Aberystwyth University

Mandatory Layout of Declaration/Statements

Word Count of thesis: DECLARATION	99,921
This work has not previously been accepted in substance for any degree and is not being concurrently submitted in candidature for any degree.	
Candidate name	Christine Andrä
Signature:	
Date	March 5, 2019

STATEMENT 1

This thesis is the result of my own investigations, except where otherwise stated.

Where *correction services have been used, the extent and nature of the correction is clearly marked in a footnote(s).

Other sources are acknowledged by footnotes giving explicit references. A bibliography is appended.

Signature:	
Date	March 5, 2019

[*this refers to the extent to which the text has been corrected by others]

STATEMENT 2

I hereby give consent for my thesis, if accepted, to be available for photocopying and for inter-library loan, and for the title and summary to be made available to outside organisations.

Signature:	
Date	March 5, 2019

Abstract

This thesis, a genealogy of war as a problem of international politics, pursues two lines of inquiry.

On the one hand, the thesis offers a genealogy of war's becoming a problem to enable a critique of how war is presently constituted as problematic. The thesis analyzes the emergence of war as an object of empirical knowledge and practical action in four historical examples: a commission of inquiry into the Balkan Wars (1912-14), debates between international jurists in the aftermaths of the Franco-German War (1871-73) and the First World War (1920), and the post-Second World War International Military Tribunal for the Far East (1946-48). This genealogical analysis produces manifold empirical materials for getting to work on our contemporary ways of knowing about and acting upon war. Specifically, it points to these ways' reliance on our being external to the problem of war.

On the other hand, the thesis undertakes a conceptual and practical re-doing of genealogy. In the spirit of Foucault's methodological conduct, the thesis foregoes genealogy as a pre-specified method. Instead, it constructs genealogy over the course of the research process: it conceptualizes genealogy as history/critique, problematization, and critical praxis, and it experiments with its own practices and ways of knowing. Understood and practiced in this way, genealogy pursues and actively tries to alter its entanglement with the problems that it studies.

The thesis contributes to various International Relations (IR) literatures. To research on war as an object of knowledge and action, the thesis adds new historical insights and suggests a broadened critical outlook. To discussions about critical methods, the thesis contributes a historical, reflexive, and practical take on methods' politicality and criticality. Finally, the thesis also makes a case for reconsidering IR's assumptions about the problem of war and our capacity for knowing about and addressing it.

Table of Contents

Mandatory Layout of Declaration/Statements	2
Abstract	3
Prologue	1
Introduction	2
A genealogical approach to war as an object of knowledge and action	6
Doing genealogy: from ready-made method to reflexively critical praxis	15
Research question, main arguments, and notes on periodization and chronology	24
Plan of the thesis	28
Chapter 1: Starting points: “war” and method as research problems	35
Seeking truth to hinder war: the example of transitional justice	36
Methods as ready-mades: the example of genealogy	55
Conclusion	75
Chapter 2: “The action thought takes en route to being”: Genealogy as history/critique, problematization, and critical praxis	77
In context: genealogy as history and critique	80
Concepts: problematization, practice, co-production, critical praxis	90
Towards a genealogical praxis	105
Doing genealogy as becoming curious	114
Chapter 3: The problem of war and the will to knowledge: The example of the Balkan Commission, ca. 1912-1914	117
Converging and competing formulations of the problem of war	121
A “scientific” way of knowing war	135
“European-modernity” and the production of epistemic and ethical subjects	162
Conclusion	175
Reflective vignette 1: On practices of thinking	181
Chapter 4: “Fragments even before they were buried”: War and war-time violence as problems of international law, ca. 1870-1872 and 1920	185
War and war-time violence’s becoming problematic	192
Knowing war	206
When and from where to know and address war?	223
Conclusion	231
Reflective vignette 2: On practices of writing	235
Chapter 5: Looking beyond “Tokyoberg”: War as crime at the International Military Tribunal for the Far East, ca. 1946-48	240
Approaches to criminalization and conceptions of the international	246
From evidence to ultimate facts: contested practices of inference and the political nature of knowledge	259
The problems of war and war-time violence at the IMTFE	284
Conclusion	303

Reflective vignette 3: On practices of looking.....	310
Conclusion.....	315
The problematization of war in international politics: histories of the present as working materials.....	317
Against methods: conceptualizing and practicing genealogy as critique	332
A sense of curiosity	339
Epilogue	342
Acknowledgements	344
Bibliography	348

Prologue

It is a very hot summer day. I am sitting in *Hörsaal* 21, one of the University of Tübingen's largest lecture halls. The room is packed – there must be at least two hundred people in here, maybe more. All of us are here to sit an exam. To be admitted to the study of political science, we must prove what they call our *Studierfähigkeit*, our ability to study.

We are told that we have sixty minutes, and we are each given a sheet of paper. It reads: "Before the North-South Commission, Willy Brandt said: 'He who wants to ban war must also ban mass poverty.' Discuss."¹

For a moment, my mind goes blank. Then, I begin to write: "To understand the relationship between war and mass poverty, we must start by defining both phenomena."

¹ Unless otherwise noted, all translations given in this thesis are my own.

Introduction

As students of International Relations (IR), we are told that the study of war and peace is one of our discipline's foremost purposes. In the introductory chapter of any of IR's plentiful stock of textbooks¹, we are likely to learn as much: that "[t]he study of international relations has classically focused on the analysis of the causes of war and the conditions of peace," for instance, and that the "[s]tudy of the causes of war continues to motivate International Relations (IR) scholars and students even now."² In my university library's copy of this particular textbook, a previous reader has underlined this last sentence, indicating that it gave them pause.

Entangled with the study of war comes a question, however: how do we know what we know about war? On this issue, the afore-cited textbook tells us that the question of "whether or not International Relations can be, or should be, a form of inquiry based upon scientific principles" has always "cut across and underpinned" IR debates, including the debate about "the likelihood that the causes of war might be ameliorated."³ Many in IR answer this "science question" in the affirmative.⁴ As but

¹ For a discussion of the usage of IR textbooks as primary sources, cf. Benjamin de Carvalho, Halvard Leira, John M. Hobson, "The Big Bangs of IR: The Myths That Your Teachers Still Tell You about 1648 and 1919," *Millennium: Journal of International Studies* 39, no. 3 (2011), 735-758, at 737f.

² Steve Smith, "Introduction: Diversity and Disciplinarity in International Relations Theory," in Tim Dunne, Milja Kurki, Steve Smith (eds.), *International Relations Theories: Discipline and Diversity* (Oxford, UK: Oxford University Press, 2nd ed., 2010), 1-12, at 2. Other introductory textbooks tell the same story. Booth and Erskine, for example, explain that in "the 'real world' of international relations [...] the stakes are high" due not least to the ever-looming "prospect of war" (Ken Booth, Toni Erskine, "Introduction: The Argumentative Discipline," in Ken Booth, Toni Erskine (eds.), *International Relations Theory Today* (Cambridge, UK: Polity Press, 2nd ed., 2016), 1-19, at 2). Even a textbook that seeks to introduce its readers to the study of international politics in a different way does so by means of the question "Why are there wars?" (Jenny Edkins, Maja Zehfuss, "Introduction," in Jenny Edkins, Maja Zehfuss (eds.), *Global Politics: A New Introduction* (London, UK: Routledge, 2009), 1-19).

³ Milja Kurki, Colin Wight, "International Relations and Social Science," in Tim Dunne, Milja Kurki, Steve Smith (eds.), *International Relations Theories: Discipline and Diversity* (Oxford, UK: Oxford University Press, 2nd ed., 2010), 13-33, at 16f.

⁴ On "the science question in IR," cf. Patrick Thaddeus Jackson, *The Conduct of Inquiry in International Relations: Philosophy of science and its implications for the study of world politics* (London, UK: Routledge, 2011), at 3ff. See also Patrick Thaddeus Jackson, "Must International Studies Be A Science?," *Millennium: Journal of International Studies* 43, no. 3 (2015), 946-965, as well as responses.

one example, consider the so-called Correlates of War Project: founded in the 1960s and still ongoing today, the project's "original and continuing goal has been the systematic accumulation of scientific knowledge about war."⁵ Others, however, strongly disagree. They point out that the idea of a "science" of IR implies a mistaken ideal of objectivity and an undue separation of the factual from the normative⁶, and that IR's purportedly "scientific" study of war occludes the violences of sovereignty and the nation-state.⁷ While commentators are split over the exact number of positions that IR scholars have taken with regard to the question of "how we know what we claim to know" about international politics in general and about war in particular⁸, this question thus constitutes a "main dividing line" within the discipline.⁹

Entangled with these different stances on knowledge about war, in turn, comes the imperative to take action.¹⁰ It is at this point, at the very latest, that we are introduced to IR's history, or more precisely to how, in 1919 and in reaction to the First World War, the founding of the allegedly first Department of International Politics at the University College of Wales in Aberystwyth marked the birth of the discipline.¹¹ In a

⁵ Correlates of War Project, "History," <http://www.correlatesofwar.org/history> (last accessed 12 October 2018). On the project's "discipline-stabilizing function," cf. Duncan Bell, "Writing the World: Disciplinary History and Beyond," *International Affairs* 85, no. 1 (2009), 3-22, at 20.

⁶ Cf. Jenny Edkins, Maja Zehfuss, "Introduction," 20; Christian Reus-Smit, Duncan Snidal, "Between Utopia and Reality: The Practical Discourses of International Relations," in Christian Reus-Smit, Duncan Snidal (eds.), *The Oxford Handbook of International Relations* (Oxford, UK: Oxford University Press, 2008), 3-39, at 16ff.

⁷ Cf. Rosemary Shinko, "Agnostic Peace: A Postmodern Reading," *Millennium: Journal of International Studies* 36, no. 3 (2008), 473-491, at 474. For examples, see Richard K. Ashley, "Living on Border Lines: Man, Poststructuralism, and War," in James Der Derian, Michael Shapiro (eds.), *International/Intertextual Relations* (New York, NY: Lexington Books, 1989), 259-321; David Campbell, Michael Dillon (eds.), *The Political Subject of Violence* (Manchester, UK: Manchester University Press, 1993).

⁸ Smith, "Introduction," 5. In Martin Hollis and Steve Smith's account, there are two principal positions – explanation and understanding (Martin Hollis, Steve Smith, *Explaining and Understanding International Relations* (Oxford, UK: Oxford University Press, 1990)). Jackson, by contrast, sees two dividing lines and proposes four principal positions: neopositivism, critical realism, analyticism, and reflexivity (Jackson, *Conduct of Inquiry*).

⁹ Smith, "Introduction," 5.

¹⁰ Booth and Erskine, for instance, immediately follow up on their discussion of IR's different ways of knowing with the question "*How should we act?*" (Booth, Erskine, "Introduction," 3, italics in original).

¹¹ Cf. John Baylis, Steve Smith, Patricia Owens, "Introduction: from international politics to world politics," in John Baylis, Steve Smith, Patricia Owens (eds.), *The Globalization of World Politics: An Introduction to International Relations* (Oxford, UK: Oxford University Press, 2014, 6th ed.), 1-14, at 3; Booth, Erskine, "Introduction," 1; Kurki, Wight, "International Relations," 17. For an early example,

particularly thorough account of this historical moment, Martin Hollis and Steve Smith argue that “[t]he subject of International Relations [...] bore the birthmarks of its origins”: as “the imprint of the First World War [...] stamped the survivors with a strong conviction that such a war must never happen again [...] International Relations had to be concerned with devising ways to prevent such wars from occurring.”¹² In short, IR’s inception in the aftermath of the First World War meant that “[t]he subject had a mission.”¹³

Of course, these ideas about how and why we study war are part of the stories we in IR tell ourselves about ourselves to explain who we are and what we do: they are not objective facts, but function as “disciplinary mythologies” which normalize and legitimize our conduct of inquiry.¹⁴ From this perspective, the history of IR’s foundational moment rendered in the previous paragraph becomes “[t]he myth of 1919.”¹⁵ This myth, it has been argued, has “three main elements” to it: a precise date of birth, a first great debate (the one which, famously, idealism lost to realism), and a belief that IR was founded “to solve the problem of war.”¹⁶ Against this disciplinary lore of the “epistemological big bang” of 1919¹⁷, revisionist scholarship has lodged a number of objections. Accordingly, the myth of 1919 is not only historically inaccurate – questions of international politics had been studied academically long before the First World War and its aftermath¹⁸, and there was a far greater diversity of positions

see Brian Porter (ed.), *The Aberystwyth Papers: International Politics, 1919-1969* (Oxford, UK: Oxford University Press, 1972).

¹² Hollis, Smith, *Explaining and Understanding*, 18f.

¹³ *Ibid.*, 19.

¹⁴ Bell, “Writing the World,” 5; cf. de Carvalho et al., “The Big Bangs of IR,” 737; Brian C. Schmidt, “On the History and Historiography of International Relations,” in Walter Carlsnaes, Thomas Risse, Beth A. Simmons (eds.), *Handbook of International Relations* (London, UK: SAGE, 2002), 1-22; Vineet Thakur, Alexander E. Davis, Peter Vale, “Imperial Mission, ‘Scientific’ Method: an Alternative Account of the Origins of IR,” *Millennium: Journal of International Studies* 46, no. 1 (2017), 3-23. On myth and IR, see also Berit Bliesemann de Guevara (ed.), *Myth and Narrative in International Politics: Interpretive Approaches to the Study of IR* (Basingstoke, UK: Palgrave Macmillan, 2016).

¹⁵ De Carvalho et al., “The Big Bangs of IR.”

¹⁶ *Ibid.*, 745f; cf. Bell, “Writing the World,” 6.

¹⁷ De Carvalho et al., “The Big Bangs of IR,” 745.

¹⁸ Cf. Brian C. Schmidt, *The Political Discourse of Anarchy: A Disciplinary History of International Relations* (Albany, NY: State University of New York Press, 1998).

on these questions than the notion of a debate between idealism and realism suggests¹⁹ – but also politically effective. Specifically, the myth of 1919 works to privilege certain approaches to the study of international politics at the expense of others, as well as to render invisible the part that Eurocentrism, imperialism, and racism have played in the becoming of the discipline of IR and its ways of knowing.²⁰

What, however, about the defining role that the problem of war has played for IR? Arguably, the assumption that war constituted *the* key problem for the study of international relations helped to aggrandize certain theories, epistemologies, and methodologies whilst debasing others: to the extent that it boosted approaches which could lay claim to providing the best analytical tools for making sense of the phenomenon of war, such as realism and positivism, it simultaneously diminished the analytical purchase of approaches which, within the story of IR's foundation in 1919, did not seem to come off so well.²¹ More recently, historians of the discipline have also suggested that IR in fact emerged not (only) from the aftermath of the First World War, but (also) from the practice of colonial administration.²² Yet overall, there has been relatively little critical and/or historical attention to what we might call “the problem of war itself”: by and large, we in IR still seem to take for granted that war constitutes an analytical object that we can know about and thereby act upon.

Against this background, this thesis, a genealogy of war as a problem of international politics, pursues two key lines of inquiry. First, by means of a history of war's becoming an object of empirical knowledge and practical action, the thesis seeks to clarify, complicate, and enable further critical work on our ways of knowing and

¹⁹ Cf. Lucian M. Ashworth, “Where are the idealists in interwar International Relations?,” *Review of International Studies* 32, no. 2 (2006), 291-308; Brian C. Schmidt, “Lessons from the Past: Reassessing the Interwar Disciplinary History of International Relations,” *International Studies Quarterly* 42, no. 3 (2002), 433-459.

²⁰ Cf. de Carvalho et al., “The Big Bangs of IR,” 737; see also John Hobson, *The Eurocentric Conception of World Politics: Western International Theory, 1760-2010* (Cambridge, UK: Cambridge University Press, 2012); Thakur et al., “Imperial Mission”; Robert Vitalis, *White World Order, Black Power Politics: The Birth of American International Relations* (Ithaca, NY: Cornell University Press, 2017).

²¹ Cf. Smith, “Introduction,” 4f.

²² Cf. Patricia Owens, “Women and the History of International Thought,” *International Studies Quarterly* 62, no. 3 (2018), 467-481; Thakur et al., “Imperial Mission”; Vitalis, *White World Order*.

addressing the problem of war. Secondly, to demonstrate what this critical work could consist in, the thesis reflects upon and experiments with its own way of knowing, genealogy. In what follows, I set out the two central problems with which the thesis grapples, war and knowledge, discuss the various literatures which provide the context for my work on these problems, provide a summary of the research question and my answers to it, and offer a plan of the thesis.

A genealogical approach to war as an object of knowledge and action

“[W]ar,” Michael Walzer writes, “is a social creation”: “[w]hat is war and what is not-war is in fact something that people decide.”²³ If this is so, then whether and how war constitutes a problem is also not a given, but something conjectured and concluded by us. Yet for a very long time, this conjecture had not been made. As Martin Ceadel points out, “[i]n medieval and early modern Europe people had taken for granted that they could do nothing to limit the incidence of war.”²⁴ How, then, did we come to think of war as a problem that we could take action upon? And what are the repercussions of the history of war’s becoming problematic for our contemporary ways of knowing and addressing war? To develop answers to these questions is the first of this thesis’ two central aims.

To pursue this aim, I undertake a genealogy of war as a problem of international politics: I analyze the history of war’s becoming an object of empirical knowledge and practical action in order to develop a critique of the problem of war’s present constitution. My contention is that war has not always been such an object, and furthermore, that a history of how it became empirically knowable and practically addressable can offer not only insights into the limits of our contemporary ways of rendering war problematic, but also materials for getting to work on these limits. In

²³ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York, NY: Basic Books, 2006), at 24.

²⁴ Martin Ceadel, *The Origins of War Prevention: The British Peace Movement and International Relations, 1730-1854* (Oxford, UK: Oxford University Press, 1996), at 1.

this way, the history of the problem of war that this thesis presents contributes to a critique of our present ways of knowing about and taking action towards war.

Specifically, my genealogical attention is fixated on ideas and practices which were advanced in the aftermath of war and aimed at preventing its recurrence. My interest in the particular problem posed by the prevention of war's recurrence arises against the backdrop of a belief which, contemporarily, is widely held both in the discipline of IR and in international post-conflict politics: namely, that the production of empirical knowledge about past war can contribute to the prevention of future war. As genealogy's particular strength lies in putting into question that which we commonly take for granted, my focus in this thesis is on the historical emergence of this nowadays taken for granted belief and some of its attendant practices.

The thesis inquires into how this connection between knowledge about and action against war is configured in the contemporary politics of transitional justice as well as into how it was forged in the work of four historical "post-war initiatives" (for lack of a better term): a group of international jurists who, in the aftermath of the Franco-German War, debated the prospects of an international judicial institution to prosecute and try violations of the rules of war (1870-1872); a commission of inquiry whose members investigated the Balkan Wars (1912-1914); a panel of jurists who, in reaction to the First World War, were tasked with designing an international court of justice (1920); and finally, the post-Second World War efforts at criminalizing war (1945-1948). In analyzing these four initiatives, I focus on formulations of war as a practical problem, on institutional forms and epistemic practices that made war into an object of knowledge, and on the kinds of epistemically, ethically, and politically capable subjects that these formulations, forms, and practices presupposed and (re-)produced. The historical analysis my thesis offers is no disciplinary history, but the history of a problem.²⁵ As a problem of international politics, war has a history which is both

²⁵ On the confines of disciplinary history writing and the imperative to broaden the scope of histories of the study of international politics, cf. Bell, "Writing the World," 11.

longer and broader than a focus on IR as a discipline could capture. Therefore, while my curiosity about the problem of war certainly owes to my background in IR, this same curiosity demands that in charting the thesis' terrain, I have to be concerned less with any disciplinary (pre-)history than with identifying some of the many locales in which it became conceivable to strive to know about and take action against war.

Nonetheless, I hope that the questions the thesis pursues with regard to the problem of war will be of interest to scholars of IR – not least insofar as the thesis' historical investigations serve a particular critical purpose. As Colin Koopman argues, genealogies are historical analyses of the preconditions and productive effects of our ways of knowing and doing that are critical insofar as they provide empirical materials which enable us to identify and get to work on the limits and constitutive exclusions of these ways of ours.²⁶ In this regard, this thesis not only offers a myriad of materials concerning the emergence of war as an object of knowledge and action, but also develops an argument about one particularly vexing limit to our contemporary ways of problematizing war: namely that these ways, insofar as they presume for us to know about and act upon war from without, rely on our being external to the problem of war and therefore leave us ill-equipped to gain insight into and seek to change our implication in this problem. To those whose scholarly and disciplinary self-identification relies on an aspiration to ameliorating or even solving the problem of war, the thesis thus extends an invitation to reconsider and perhaps begin to rework the ways in which they have so far sought to do so.

In addition, as my analysis and argument draw on several more specific literatures to be found both in IR and in neighbouring disciplines, the historical findings and critical implications of this thesis' genealogy of the problem of war also make a number of contributions to these more specialized discussions.

²⁶ This particular understanding of genealogy will be discussed at length throughout the thesis. For a major statement on genealogy thus conceived, cf. Colin Koopman, *Genealogy as Critique: Foucault and the Problems of Modernity* (Bloomington, IN: Indiana University Press, 2013).

While generally, discussion of “war” in quotation marks, or war as an object of thought and action²⁷, has been surprisingly sparse in IR²⁸, there are a few notable exceptions. For instance, there is Martin Ceadel’s history of how, during the eighteenth and nineteenth centuries, “fatalism” – a view that took for granted war as a “fact of life” – gave way to the idea of war as problematic, and specifically of war as a problem that could be addressed, indeed prevented by an (only just emerging) civil society.²⁹ Then, there is Jens Bartelson’s historical ontology of the waxing and waning of “ontogenetic war” – the idea that war is productive of political order – from the early seventeenth until the late nineteenth century, which analyzes the history of this idea’s “performative consequences” in order to challenge its workings in our present moment.³⁰ And as yet another example, there is Maja Zehfuss’ analysis and critique of the interrelationship between the notion of “ethical war” – the idea that war is or can be good – and the contemporary conduct of Western warfare.³¹

The genealogy of the problem of war which I develop in this thesis overlaps with these analyses of fatalism, ontogenetic war, and ethical war in a number of ways. Like Ceadel, I study the history of war’s becoming a preventable problem, and like Ceadel and Zehfuss, I study “war” as it is produced by the actions of people trying to practically grapple with it. Like Bartelson, furthermore, I consider the idea of “war” as a productive historical force without, however, ascribing to this idea myself. Finally, like Bartelson and Zehfuss, I undertake my research to develop a critique of our ways of thinking about and relating to war: like Bartelson, I inquire into how war has been thought about in the past in order to recognize the limits of our contemporary ways of

²⁷ For the distinction between war and “war,” cf. Astrid H. M. Nordin and Dan Öberg, “Targeting the Ontology of War: From Clausewitz to Baudrillard,” *Millennium: Journal of International Studies* 43, no. 2 (2015), 392-410, at 394. In this thesis, I am concerned solely with “war” as an object of our thinking and doing – yet for the ease of reading, I do not put it in quotation marks unless if this is necessary to avoid misunderstandings.

²⁸ Cf. Antoine Bousquet, “The Concept of War in World Politics,” in Berenskoetter, Felix (ed.), *Concepts in World Politics* (London, UK: SAGE, 2016), 91-106.

²⁹ Martin Ceadel, *The Origins of War Prevention*. On war as a “fact of life,” cf. Holsti *apud* Ceadel, *ibid.*, 4.

³⁰ Jens Bartelson, *War and International Thought* (Cambridge, UK: Cambridge University Press, 2017). On the notion of “performative consequences,” cf. *ibid.*, 15.

³¹ Maja Zehfuss, *War and the Politics of Ethics* (Oxford, UK: Oxford University Press, 2018).

thinking; and like Zehfuss, I contend that we ought to reflect on and alter our ways of bearing responsibility for war.

In the end, however, my prime concern in this thesis is not with fatalism, ontogenetic war, or ethical war, but with war as a problem of empirical knowledge and practical action. Therefore, the research I present in this thesis differs from and adds to Ceadel's, Bartelson's, and Zehfuss' works in a number of central aspects. On the one hand, there are differences in my understanding and implementation of history. Generally, I take up the chronological thread from where Ceadel and Bartelson leave it off roughly in the middle of the nineteenth century and spin it to the middle of the twentieth. More particularly, I do not share Ceadel's ambition to cover a historical period broadly and comprehensively.³² Rather, I opt for a focus on a handful of historical examples, which I use to ask more precisely defined and, or so I hope, more acute questions about the history of our present ways of rendering war problematic. Within these historical examples, however, I take a broader approach. First, and unlike Bartelson's, my analysis combines the study of war as an object of thought with an inquiry into the practices and institutional forms through which war was rendered knowable and actionable. Secondly, insofar as I do study ideas of war, my gaze is not fixated on a particular view of war in the way that Zehfuss and Bartelson's are. Instead, the genealogy developed in this thesis is principally open to any understanding of war raised in the primary sources, and it thereby produces insights not only into a number of different formulations of war as productive-yet-problematic, but also into how these formulations were replaced by understandings of war as a rationally soluble problem. In sum, my historical analysis of the emergence of the problem of war thus contributes to existing research in IR through focusing on a period of time as well as on a number of details of this emergence which have so far received relatively little attention.

On the other hand, my thesis also differs from the aforementioned authors in its understanding and practice of critique. For one, the targets of Bartelson's critique are

³² Cf. Ceadel, *Origins of War Prevention*, 17f.

not only those contemporary political forces who mobilize an ontogenetic view of war to justify military interventions, but also the proponents of critical war studies³³: highlighting the “looping effects” through which our concepts enable and constrain our thinking³⁴, Bartelson charges this latter group with perpetuating a concept of war that limits our understanding of the emergence of the political to “violent imaginaries.”³⁵ While I agree with Bartelson’s diagnosis, in this thesis I seek to broaden the reflexive scope of historically-based critique. To this end, and as I will begin to outline in the following section of this introduction, genealogy as history/critique addresses not only our analytical concepts and their presuppositions, but also our practices and ways of knowing. Meanwhile, Zehfuss’ critique is directed not only against those who take decisions about going to war, but also against the proponents of just war theory who, by “[allowing] us to think that if only the destruction could be reduced or ideally eliminated, war would be just fine,” in fact enable war and its violences.³⁶ To Zehfuss’ finding that, in the problem of war’s contemporary constitution, “war arrives from what is imagined as the outside,”³⁷ my thesis adds a number of insights about the historical antecedents of our present situation. Thereby, the genealogy I develop in this thesis ultimately goes beyond Zehfuss’ critique insofar as it calls to account not only just war theorists, but anyone engaged in the analysis of war. In sum, I concur with Bartelson and Zehfuss that we in IR would do well to forego further theorization of war until we have achieved a better understanding of how existing theories enable and constrain our ability to address war.³⁸ However, the

³³ E.g. Tarak Barkawi and Shane Brighton, “Powers of War: Fighting, Knowledge, and Critique,” *International Political Sociology* 5, no. 2 (2011), 126-143; Michael Dillon, Julian Reid (eds.), *The Liberal Way of War: Killing to Make a Living* (London, UK: Routledge, 2009); Vivienne Jabri, *War and the Transformation of Global Politics* (Basingstoke, UK: Palgrave Macmillan, 2007).

³⁴ Bartelson, *War in International Thought*, 22ff. Cf. Ian Hacking, “The Looping Effects of Human Kinds,” in Dan Sperber, David Premack, Ann James Premack (eds.), *Causal Cognition: A Multi-Disciplinary Approach* (Oxford, UK: Clarendon Press, 1995), 351-394.

³⁵ Bartelson, *War in International Thought*, 201, cf. 15.

³⁶ Zehfuss, *War and Politics*, 2f. For affirmative statements of just war theory, cf. Alex J. Bellamy, *Just Wars: From Cicero to Iraq* (Cambridge, UK: Polity Press, 2006); Walzer, *Just and Unjust Wars*. For an internal critique of just war theory’s violence-enhancing properties, cf. Kimberly Hutchings, “War and Moral Stupidity,” *Review of International Studies* 44, no. 1 (2017), 83-100.

³⁷ Zehfuss, *War and Politics*, 3f.

³⁸ Cf. Bartelson, *War in International Thought*, 24; Zehfuss, *War and Politics*, 11.

problem with IR's ways of problematizing war is not confined to theory, but pertains to our ways and practices of knowing war more generally – and to stand a chance at recognizing and getting to work on the limits of these ways, we need research that historicizes our contemporary ways in a way that does not exclude itself from the reflexive scope of its critique.

Because the study of war has never been limited to any individual discipline³⁹, this thesis also relies on literatures stemming from neighbouring disciplines. In elaborating the thesis, works falling broadly into the field of international law have been important first and foremost in the development of some of the individual chapters, and I will accordingly discuss their relevance to my research in Chapters 4 and 5. By contrast, a number of historical and social-theoretical studies on war as an object of thought and action have played a more general role in shaping my position on questions of the history and critique of the problem of war, and they therefore merit a brief discussion at this point.

Historical research primarily orients this thesis by corroborating the feasibility and value of a historical analysis of our ways of understanding and problematizing war. Historian Annette Weinke, for instance, finds that over the course of the twentieth century, the changing discourses and practices by means of which different actors struggled to render war illegal had “constitutive effects on political realities.”⁴⁰ Likewise focusing on the twentieth century, Jay Winter shows how artistic depictions of war shifted from representing war as such to representing soldiers and civilians; this shift, Winter argues, “helped to undermine the legitimacy of war as an instrument of political life.”⁴¹ The individuals affected by war are also the focus of Svenja

³⁹ Cf. Hans Joas, Wolfgang Knöbl, *Kriegsverdrängung: Ein Problem in der Geschichte der Sozialtheorie* (Frankfurt a.M., Germany: Suhrkamp, 2008), at 16. For an English translation, see Hans Joas, Wolfgang Knöbl, *War in Social Thought*, Translated by Alex Skinner (Princeton, NJ: Princeton University Press, 2012).

⁴⁰ Annette Weinke, *Gewalt, Geschichte, Gerechtigkeit* (Göttingen, Germany: Wallstein Verlag, 2016), at 10f.

⁴¹ Jay Winter, *War Beyond Words: Languages of Remembrance from the Great War to the Present* (Cambridge, UK: Cambridge University Press, 2017), at 3.

Goltermann, whose historical analysis of the interrelationship between the idea of the “victim of war” and different knowledge practices reveals how, during the nineteenth and twentieth centuries, this idea served sometimes to legitimate, sometimes to render problematic war and violence.⁴² Taken together, Weinke, Winter, and Goltermann’s research thus evidences the potential of an inquiry into the history of the problem of war and points to possible examples through which this history can be accessed.

Social theoretical works on the problem of war, in turn, orient this thesis in two ways: by exemplifying different ways of critique, and by pointing to European modernity as the specific context in which this thesis’ genealogy of the problem of war is situated. With regard to the former issue, Hans Joas and Wolfgang Knöbl critically examine social theory’s historical “suppression” of war in order to offer pointers for a future sociological theory of war.⁴³ A different approach to critique is taken by Judith Butler and Etienne Balibar. Demonstrating how our “frames of war” make some lives lost in war grievable by rendering others ungrievable, Butler seeks to enable a break with these frames and thereby a different kind of outrage against war.⁴⁴ In a similar vein, Balibar’s discussion of theoretical concepts of war alongside the specific example of the so-called “War on Terror” seeks to fracture both the general (concepts) and the particular (example).⁴⁵ As for the latter question, whereas Joas and Knöbl point to war’s constitutive role in European modernity, Butler and Balibar seek to expose the “profoundly Eurocentric” nature of our ways of making sense of war.⁴⁶ This thesis takes much inspiration from Joas and Knöbl, Butler, and Balibar. Collectively, their works illustrate how a critique of the problem of war can point out the limits and constitutive exclusions of our contemporary present, yet also provide materials for

⁴² Svenja Goltermann, *Opfer – Die Wahrnehmung von Krieg und Gewalt in der Moderne* (Frankfurt a.M., Germany: S. Fischer, 2017), at 23-25.

⁴³ Joas, Knöbl, *Kriegsverdrängung*, 14f. Note that in the English translation, the authors’ concern with the suppression of war has been dropped from the book’s title.

⁴⁴ Judith Butler, *Frames of War: When Is Life Grievable?* 3rd paperback ed. (London, UK: Verso, 2016 [2001]).

⁴⁵ Etienne Balibar, “What’s in a War? (Politics as War, War as Politics),” *Ratio Juris* 21, no. 3 (2008), 365-386.

⁴⁶ *Ibid.*, 373.

getting to work on constructing a different future. In addition, they highlight that a genealogy of the problem of war developed for such critical purposes needs to pay particular attention to European modernity as the context in which it operates.

In relation to these historical and social-theoretical analyses of the problem of war, the aim of my thesis is not so much to add to their respective findings, but rather to strike up a conversation. In particular, my thesis hopes to enable a conversation about the problem of war which, though conducted between IR and its neighbouring disciplines, does not take place on one or another discipline's terrain. Such a conversation is currently still lacking: in IR as in its neighboring disciplines, inquiries into war as an object of knowledge and action are for the most part pursued along lines that emphasize how understandings of war interact with these disciplines' core concerns. This tendency, however, is problematic – for it risks blinding us to those limits of the contemporary problem of war that result from the historical co-emergence of different understandings of war and different disciplines in charge of producing these understandings.⁴⁷ In light of this, I suggest that a focus on war's becoming problematic can provide an opening for conversations which are not as confined by disciplinary boundaries and concerns.⁴⁸

Overall, then, the first key aim of my thesis is to clarify, complicate, and provide materials for getting to work on our current ways of taking epistemic and practical action towards war. To this end, I undertake to historically investigate how war became a problem of international politics, and in particular how it became a problem that can be prevented through the production of empirical knowledge. To be clear, I do not make any claims about war's ontology.⁴⁹ Nor do I make an effort to examine

⁴⁷ Cf. Richard K. Ashley, R. B. J. Walker, "Conclusion: Reading Dissidence/Writing the Discipline: Crisis and the Question of Sovereignty in International Studies," *International Studies Quarterly* 34, no. 3 (1990), 367-416.

⁴⁸ On Foucauldian analyses as an antidote to disciplinarity, cf. Louise Amoore, "Foucault Against the Grain," *International Political Sociology* 2, no. 3 (2008), 274-276.

⁴⁹ For an argument about war's changing character yet inherent nature, cf. Hew Strachan, Sibylle Scheipers (eds.), *The Changing Character of War* (Oxford, UK: Oxford University Press, 2011).

the relationship between the phenomenon of war and our ways of knowing about it⁵⁰, or to improve the “fit” between this phenomenon and these ways.⁵¹ Of course, this is not to suggest that war and the suffering it causes were somehow not real. Rather, as Bartelson puts it, what is at stake is “showing how these experiences [of war and its violences] became real in the first place.”⁵² To this end, by conducting a genealogy of war as an epistemic and actionable object, I develop questions and materials through which we can begin to un- and remake how we presently make sense of war and thus make war problematic.

Doing genealogy: from ready-made method to reflexively critical praxis

What, though, does conducting a genealogy actually consist in? On this matter, the aforementioned Colin Koopman – a philosopher by trade – complains that while there are “many books and articles purporting to be genealogical in design,” only “few of them have said much, if anything at all, about what it means to be genealogical beyond a vague appeal to something called ‘history in philosophy,’ frequently combined with a reference or two to Foucault or Nietzsche.”⁵³ In IR, where there are long-standing discussions of methodology and method⁵⁴, Koopman’s charge does not apply in equal measure. For every genealogical study of international politics making a “vague appeal” to Foucault and Nietzsche, there seems to be another one which spells out the design and method of genealogy in a lot of thoughtful detail. Another complaint of Koopman’s, however, seems pertinent to genealogical works in IR, too: namely, that many self-purported genealogies, mumbling “something about how history shows us

⁵⁰ For an example of a study of how ways of knowing have influenced the conduct of warfare, cf. Antoine Bousquet, *The Scientific Way of Warfare: Order and Chaos on the Battlefield of Modernity* (Oxford, UK: Oxford University Press, 2010). The converse argument – that changes in warfare influenced our ways of knowing about war – is, of course, at the heart of the “myth of 1919”; and in a more theoretical pronouncement, it is also at the heart of critical war studies (cf., in particular, Barkawi, Brighton, “Powers of War”).

⁵¹ For an exemplary analysis of this kind of question, cf. Bousquet, “Concept of War.”

⁵² Bartelson, *War in International Thought*, 3.

⁵³ Koopman, *Genealogy as Critique*, 5.

⁵⁴ For a recent overview, cf. Cora Lacatus, Daniel Schade, Yuan (Joanne) Yao, “Quo vadis IR: Method, Methodology and Innovation,” *Millennium: Journal of International Studies* 43, no. 3 (2015), 767-778.

that taken necessities are really contingent,” are not sufficiently articulate on how the histories they trace enable or constitute a critique of the present.⁵⁵ The question, therefore, is a more specific one: what does conducting genealogy as critique actually consist in? Developing an answer to this question is the second main purpose of this thesis.

To accomplish this purpose, I propose to eschew genealogy as method in favour of genealogy as history/critique, problematization, and critical praxis. By “genealogy as method,” I am referring to a two-step procedure in which genealogy is first specified as an analytical tool and then wielded onto the world in the pursuit of knowledge and critique.⁵⁶ Widespread and relatively uncontroversial in IR, this understanding and practice of genealogy in effect extracts itself from the world it is studying – and consequently, it becomes impossible for genealogy to apply its critical insights into the histories of our will to knowledge not only to others, but also to its own practices and conduct. In this way, genealogy as method risks exempting itself from the scope of its history and critique.

To remedy this, it is necessary to find a way of understanding and practicing genealogy as part of the world that it studies. It is to this end that I put forth genealogy as history/critique, problematization, and critical praxis. As history/critique, genealogy is this-worldly by being historical in the same way in which its other objects of study are: it is *in principle* contingent and in flux and *in practice* continuously in the process of being made. As problematization, genealogy inquires into the emergence of problems in order to render them further problematic and thus becomes part of the processes of emergence that it studies. As critical praxis, finally, genealogy takes up its insights into the histories of our ways and practices of knowing, being and doing to experiment with its own ways and practices, probing their limits and pushing against them from the inside out.

⁵⁵ Koopman, *Genealogy as Critique*, 5.

⁵⁶ For an example of the view of methods as “tools” to be chosen from a “toolbox,” cf. Lacatus et al., “*Quo vadis IR*,” 771f.

How to put this understanding of genealogy into practice? On the one hand, over the course of the thesis, I work to problematize – to establish, analyze, and render further problematic – not only the problem of war, but also the problem of genealogy as method. On the other hand, I make an effort to undo and redo some of the knowledge practices which my historical analysis identifies as central to the emergence of the problem of war. To this end, in the thesis' three historical chapters I experiment with disciplinary practices of thinking, of writing, and of looking. Yet while the thesis thus puts into practice a certain understanding of genealogy, it is also through the practice of research that the thesis arrives at this understanding. In fact, it was through the process of the research that, little by little, I came to appreciate genealogy as the sustained and critical work on a problematization of which genealogy is itself a part, and as an experimentally probing praxis of doing genealogy's practices differently. In conducting genealogy as critique, then, the practice of the research and the reflection upon this practice are necessarily interwoven – and insofar as this thesis sometimes disentangles practice and reflection, this is not to suggest that they were distinct or consecutive steps, but only to make the thesis writable and readable.

To be clear, I do not mean to suggest for the way I propose in this thesis to be the only way in which genealogy could enable or constitute critique. Nor do I wish to claim that all genealogies ought to proceed exactly as I did.⁵⁷ Rather, my contention is that genealogy as history/critique, problematization, and critical praxis, by rendering genealogy a part of the world and thus bringing it within the scope of critique, is one viable and expedient way of addressing the problem of genealogy as method.

The thesis' argument about genealogy as critique contributes both to the considerable genealogical literature in IR – a literature whose critical potential, *pace* Koopman, is often inhibited precisely by the diligence of its design and method – and to discussions of non-positivist and critical methods in IR more generally. I will provide a more

⁵⁷ This is not least because I have conducted a genealogy in order to work on a specific problem – and thus, my “way of questioning limitations” is a reaction to a “local strategic situation” (Ashley, Walker “Reading Dissidence/Writing the Discipline,” 393).

extensive discussion of the first strand of literature in Chapter 1, where I draw on the example of genealogical research in IR to elaborate what precisely is problematic about genealogy as method. The thesis' main contribution to this literature is to offer a counter-example of genealogy as a way of knowing that includes itself within the scope of its critique. To discussions of critical methods in IR more generally, in turn, the thesis contributes by proposing genealogy as an historically-founded and reflexive mode of research through which methods can be shown to be political and made to do critical work – and by giving an example of what this mode of research could look like in practice.

The question of methods and their relationship to critique is not new to IR. Ever since post-positivism's entry to the discipline in the 1980s and 1990s, some scholars have castigated "methodologism" and "scientism" as obstacles to critique⁵⁸, whereas others, to loosen "the link between methodology and positivist epistemology,"⁵⁹ have pointed out the "methodological approaches" offered by critical theory⁶⁰ or provided how-to manuals on using critical methods such as discourse analysis.⁶¹ While these various non-positivist views of methods diverge on whether or not methods have a place in critical work, they actually share in common an understanding of methods as pre-existing or given techniques that are not themselves affected by the (critical or not so critical) analyses they help realize.⁶²

⁵⁸ James Der Derian, "The Boundaries of Knowledge and Power in International Relations," in James Der Derian, Michael J. Shapiro (eds.), *International/Intertextual Relations* (New York, NY: Lexington Books, 1989), 3-10; Jim George, *Discourses of Global Politics: A Critical (Re)Introduction to International Relations* (Boulder, CO: Lynne Rienner, 1994).

⁵⁹ Lene Hansen, *Security as Practice: Discourse Analysis and the Bosnian War* (Abingdon, UK: Routledge, 2006), at 2.

⁶⁰ Richard Price, Christian Reus-Smit, "Dangerous Liaisons? Critical International Theory and Constructivism," *European Journal of International Relations* 4, no. 3 (1998), 259-294.

⁶¹ Hansen, *Security as Practice*; Jennifer Milliken, "The Study of Discourse in International Relations: A Critique of Research and Methods," *European Journal of International Relations* 5, no. 2 (1999), 225-254.

⁶² As Aradau and Huysmans point out, to the extent that positivist IR scholarship has seized methods as techniques, critical scholarship has by and large shifted away from consideration of methods and towards elaborations of meta-theory or methodology (Claudia Aradau, Jef Huysmans, "Critical methods in International Relations: The politics of techniques, devices and acts," *European Journal of International Relations* 20, no. 3 (2013), 596-619, at 597.

More recently, however, this understanding of methods as ready-mades has been challenged: against those in IR who employ – or write off – methods as techniques, authors writing from perspectives such as pragmatism, critical security studies, and assemblage thinking have put forward various proposals for understanding and practicing methods as not only impacting on, but also as part of the (social) world.⁶³ From a pragmatist perspective⁶⁴, Jörg Friedrichs and Friedrich Kratochwil posit that the social world is not “ready-made to be discovered” and that the production of knowledge of this world “is a social activity taking place in communities of practice.”⁶⁵ On the basis of these premises, they develop abduction as a pragmatist research instrument constituting “a compromise between [...] scientific methodology and the way we produce knowledge in everyday social practice”⁶⁶: moving back and forth between the formulation of a problem, a set of observations, and a number of concepts, abduction consists in the continuous adaptation of these three elements to each other, all in an effort to produce knowledge that will be useful in dealing with the problem at hand. Although Friedrichs and Kratochwil do not seek to offer another “critique of the critical critique,”⁶⁷ they nonetheless conceive of abduction as a critical procedure which, in contrast to both positivist and critical and/or interpretive methods, does not

⁶³ Of course, depending on one’s perspective, these perspectives might be seen as partially overlapping (cf., e.g., Christian Bueger, “Thinking Assemblages Methodologically: Some Rules of Thumb,” in Michele Acuto, Simon Curtis (eds.), *Assemblage Thinking and International Relations* (Basingstoke, UK: Palgrave, 2014), 58-66, at 64).

⁶⁴ On pragmatism in IR, cf. Gunther Hellmann (ed.), “The Forum: Pragmatism and International Relations,” *International Studies Review* 11, no. 3 (2009), 638-662. On how to combine pragmatism and genealogy for an experimental analysis that involves the analyst in the work on problems, cf. Koopman, *Genealogy as Critique*; Paul Rabinow, “Dewey and Foucault: What’s the Problem?,” *Foucault Studies* 11 (2011), 11-19.

⁶⁵ Jörg Friedrichs, Friedrich Kratochwil, “On Acting and Knowing: How Pragmatism Can Advance International Relations Research and Methodology,” *International Organization* 63, no. 4 (2009), 701-731, at 712f. Friedrichs and Kratochwil mostly draw upon the work of Richard Rorty and Charles Sanders Pierce (cf. Richard Rorty, *Consequences of Pragmatism: Essays, 1972-1980* (Minneapolis, MN: University of Minnesota Press, 1982; Charles Sanders Pierce, *Collected Papers, Vol. 1-7* (Cambridge, MA: Harvard University Press, 1965)).

⁶⁶ Friedrichs, Kratochwil, “On Acting and Knowing,” 715.

⁶⁷ *Ibid.*, 703.

“surrender all critical judgment” either to one’s analytical categories or to one’s sources of information.⁶⁸

In critical security studies⁶⁹, meanwhile, Claudia Aradau, Jef Huysmans, Andrew Neal and Nadine Voelkner suggest to conceive of methods as practices that “act in and upon security worlds.”⁷⁰ Extrapolating from understandings of security as performative, the authors maintain that methods, too, are performative rather than representational – that they are “inscribed by and bear upon power relations, struggles and habitual dispositions in the fields of both security and scholarship.”⁷¹ To address this political aspect of methods, Aradau and colleagues call not only for an analysis of methods as world-making practices, but also for “a more experimental move to and fro, of improvisation and bricolage” in our handling of methods.⁷² In a subsequent article, Aradau and Huysmans extend the argument to IR more generally.⁷³ Inspired by John Law’s assertion that the productive ontology of the (social) world requires us to find methods with which “to make good difference in circumstances where reality is both unknowable and generative,”⁷⁴ they propose a conceptualization of methods as devices and acts. This conceptualization, they argue, enables an analysis of how methods are political – how they make and disrupt worlds – and a practice of methods as critical – in which methods’ politicality is seized to effect change in the world.

Finally, methods have also been regarded in a critical vein from the vantage point of assemblage thinking. As Michele Acuto and Simon Curtis explain, assemblage thinking eschews “general categories” and “abstract concepts” in favour of “conceptualizing the various entities of the natural and social world as assemblages of

⁶⁸ *Ibid.*, 714f.

⁶⁹ For an overview, cf. c.a.s.e. collective, “Critical Approaches to Security in Europe: A Networked Manifesto,” *Security Dialogue* 37, no. 4 (2006), 443-487.

⁷⁰ Claudia Aradau, Jef Huysmans, Andrew Neal, Nadine Voelkner, “Introducing critical security methods,” in Claudia Aradau, Jef Huysmans, Andrew Neal, Nadine Voelkner (eds.), *Critical Security Methods: New frameworks for analysis* (London, UK: Routledge, 2013), 1-22, at 15.

⁷¹ *Ibid.*, 15f.

⁷² *Ibid.*, 7.

⁷³ Aradau, Huysmans, “Critical methods in IR.”

⁷⁴ John Law, *After Method: Mess in Social Science Research* (Abingdon, UK: Routledge, 2004), at 7.

heterogeneous components that are always transient, open, and in process.”⁷⁵ To think of ideas and materials, objects and subjects as entangled in ever-fluid assemblages means to think of them not in terms of categorical distinctions, but as compositions of and as nested within further assemblages, and moreover as having a different, distributed kind of agency. It is in this sense that methods, too, have been understood as assemblages.⁷⁶ This line of thought implies that methods are no longer given tools: as Michael Williams argues, assemblage thinking entails that the “[methods] toolbox needs to be reimagined as a dynamic and transactional space – more akin to the fluid world of software design than the settled scene of the tool shed.”⁷⁷ Thus, in assemblage thinking, methods are this-worldly by being composed of and nested within transient assemblages, raising the political question of how methods contribute to the momentary solidification of orders and entailing the critical imperative to practice methods in a way that refutes their stabilizing and ordering effects.⁷⁸

Against methods as ready-mades, pragmatism, critical security studies, and assemblage thinking thus undertake different theoretical, conceptual, and practical moves that conceive of and begin to put into action methods as political and critical. To these various discussions, this thesis adds by offering a historical and reflexive take on the politicality and criticality of methods. Based on an understanding of methods as composed of knowledge practices and coalescing into ways of knowing, the genealogy developed in this thesis inquires into the histories of these practices and ways, into their entanglement with formulations of war as an epistemic and actionable problem, and into the preconditions and limits of these practices, ways, and formulations. I then take up the findings of the historical analysis to reflexively turn

⁷⁵ Michele Acuto, Simon Curtis, “Assemblage Thinking and International Relations,” in Michele Acuto, Simon Curtis (eds.), *Reassembling International Theory: Assemblage Thinking and International Relations* (Basingstoke, UK: Palgrave, 2014), 1-15, at 2, 4f.

⁷⁶ Cf. Bueger, “Thinking Assemblages Methodologically”; Debbie Lisle, “Energizing the International,” in Michele Acuto, Simon Curtis (eds.), *Reassembling International Theory: Assemblage Thinking and International Relations* (Basingstoke, UK: Palgrave, 2014), 68-74.

⁷⁷ Williams cited in Lisle, “Energizing,” 70.

⁷⁸ Cf. Bueger, “Thinking Assemblages Methodologically,” 65f.; Lisle, “Energizing,” 70.

them back on my own knowledge practices.⁷⁹ Experimenting with practices of thinking, of looking, and of writing, I try to modify these practices so that they no longer serve quite so easily to reproduce what the historical analysis has highlighted as problematic about our ways of problematizing war, namely, the subject whose epistemic, ethical, and political capacity is founded upon a position outside of the problem of war.

While the different strands of IR literature outlined above all mention in passing the potential role of history for the development of a critical take on methods, and while they all seem potentially sympathetic to including a reflexive element, they mostly do not pursue these matters further. As regards history, Aradau and Huysmans' remark upon how the "promise" of a critical methodological turn is hindered by the tendency of much of the critical literature to "[relegate] methods to the dustbin of history (i.e. to that which is not really making history and is not part of the world)," yet they do not follow up on this remark.⁸⁰ Likewise, Kratochwil and Friedrich's affirmation of the "historical contingency of scientific knowledge"⁸¹ and Acuto and Curtis' "insistence on the provisional nature of all assemblages as historically contingent entities"⁸² remain, by and large, incidental comments.⁸³ Overall, while it seems that pragmatism, critical security studies, and assemblage thinking would principally allow for and perhaps even welcome an historical take on methods and critique, they have thus far mostly pursued other lines of thought.

⁷⁹ For an understanding of reflexivity as the "turning back" of thought and action onto itself, cf. Jack L. Amoureux, Brent J. Steele, "Introduction," in Jack L. Amoureux, Brent J. Steele (eds.), *Reflexivity and International Relations: Positionality, critique, and practice* (London, UK: Routledge, 2016), 1-20, at 3; Mark A. Neufeld, *The Restructuring of International Relations Theory* (Cambridge, UK: Cambridge University Press, 1995), at 40. Amoureux and Steele explicitly mention the possibility of pursuing reflexivity historically and in practice.

⁸⁰ Aradau, Huysmans, "Critical methods in IR," 602.

⁸¹ Friedrichs, Kratochwil, "On Acting and Knowing," 713.

⁸² Acuto, Curtis, "Assemblage Thinking and International Relations," 4.

⁸³ Curiously, this is so although Acuto and Curtis repeatedly cite Saskia Sassen's work on the nation-state and modernity as historical assemblages (cf. Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton, NJ: Princeton University Press, 2006)).

As regards reflexivity, of the above-cited strands of literature, Friedrich and Kratochwil's formulation of pragmatism is the only piece to explicitly consider the issue. In these authors' view, pragmatist research, by being "reflexive about [informants'] intersubjective rationalizations" as well as about "the conceptual instruments used for observation," amounts to an operation of 'double' or even 'triple' hermeneutics.⁸⁴ It would have been tempting to think that the notion of triple hermeneutics also captured critical security studies and assemblage thinking's efforts at reconceptualizing methods as practices, devices and acts, and assemblages – were it not for Friedrichs and Kratochwil's "conviction that warranted knowledge presupposes a degree of reflexive elaboration that is largely absent from everyday life."⁸⁵ Indeed, this conviction seems as far a cry from the anti-hierarchical stance of assemblage thinking as from the analogies that critical security studies draw between the fields of security and scholarship. However, while this stance and these analogies might indicate assemblage thinking and critical security studies to be open to an (egalitarian) reflexivity, the "turning back" of thought and action onto itself does not seem to constitute a central move within either of these two approaches to methods and critique.

In contrast to pragmatism, critical security studies and assemblage thinking, this thesis heeds the call for "deepening the *problematization* of method throughout the practice of research"⁸⁶ first and foremost through undertaking genealogical, i.e. historical and reflexive, work on its practices and ways of knowing. In its historical aspect, this take on methods and critique fleshes out and substantiates an argument about methods' political and critical nature that, albeit brought up *en passant* in the different strands of the relevant IR literature, has thus far remained relatively undeveloped. In particular, I argue that the politicality and, hence, the critical potential of methods lie not only in

⁸⁴ *Ibid.*, 714. On reflexivity and double hermeneutics in IR, cf. Stefano Guzzini, "A Reconstruction of Constructivism in International Relations," *European Journal of International Relations* 6, no. 2 (2000), 147-182.

⁸⁵ Friedrichs, Kratochwil, "On Acting and Knowing," 703.

⁸⁶ Aradau et al., "Introducing Critical Security Methods," 6, emphasis in original.

their entanglement in power relations and in political struggles. Rather, in this thesis methods are political insofar as they are historical: insofar, that is, as the historical emergence of our contemporary ways and practices of knowing enables and constrains these contemporary ways and practices. As for genealogy's reflexive dimension, the thesis shuns the assumption of epistemological privilege often implied in practices of double and triple hermeneutics. Moreover, rather than being reflexive solely towards my concepts, as pragmatism and assemblage thinking seem to sometimes imply, I also seek to turn my thesis' historical insights back unto my own knowledge practices. In sum, this thesis thus contributes to existing literatures on critical methods in IR by developing genealogy into a historical and reflexive mode of critique that brings within the scope of critique not methods in general, but *our* (critical) methods in particular, that urges us to get to work on these methods and provides us with the materials we need for commencing this work, and that offers an example of what this critical labour could, in practice, amount to.

Research question, main arguments, and notes on periodization and chronology

In a nutshell, through developing a genealogy of war as a problem of international politics, this thesis aims to interrogate and render problematic two contemporary conditions: the condition of war as an object of knowledge and action, and the condition of genealogy as a research method. To realize this twofold aim, I pursue the following research question:

What does a genealogy of the problem of war in international politics do to our understanding of war and to our conception and practice of genealogy?

In answer to this question, my thesis proposes, first, that such a genealogy clarifies, complicates, and facilitates the development of alternatives to our current ways of knowing about and taking action against war. To these ends, through an analysis of the historical becoming of the problem of war in the work of four "post-war initiatives"

that sought to know about war to prevent its recurrence, the genealogy offered in this thesis produces manifold empirical materials that can be taken up in order to get to work on our contemporary ways of rendering war problematic. More specifically, I use the materials provided by the historical analysis to argue that our contemporary understanding of the problem of war relies upon and reproduces the assumption that the capacity for meaningful epistemological and political action towards war presupposes a subject position to the outside of this problem. This assumption, I contend, is problematic not only for how it denies many people agency towards the problem of war, but also insofar as it inhibits those of us who regard ourselves as epistemologically capable vis-à-vis war from inquiring into how we are implicated in the problem that war constitutes.

Secondly, the genealogy of the problem of war proposed in this thesis undoes genealogy as method and redoes it as history/critique, problematization, and critical praxis. Picking up on one of the main insights of the historical analysis, I point out how the understanding of genealogy as a method exempts its own ways and practices of knowing from the scope of its critique. Thereupon, I undertake a number of conceptual and practical moves to bring genealogy back into the ambit of its own historical and critical inquiry. On the one hand, a conceptualization of genealogy as problematization allows me to explicate how genealogy becomes a part of the processes of emergence that it studies. On the other hand, in an attempt to practically reflect upon my ways of knowing – the ways in which I have, in previous research, studied war and its violences, and the ways in which, in this thesis, I inquire into the history of our ways of knowing war – I experiment with my practices of thinking, of looking, and of writing.

I develop these answers and undertake these experiments through an engagement of both secondary literatures and primary sources. In terms of the secondary literature, my analysis and argument are indebted first and foremost to the works of Michel Foucault – of which I therefore offer a detailed discussion in Chapter 2 of this thesis. As regards primary sources, I collected and studied archival materials pertaining to

four historical examples of initiatives which sought to address the problem of war by producing knowledge about it. In order of their appearance in the chapters to follow, these are: the International Commission to Inquire into the Causes and Conduct of the Balkan Wars (1912-1914); two proposals for an international tribunal to investigate and try violations of the laws of war which were discussed between different groups of international lawyers in the aftermaths of, respectively, the Franco-German War (1870-1872) and the First World War (1920); and the International Military Tribunal for the Far East (IMTFE) (1946-1948).

While I will explain the logic of genealogy as an exemplary rather than comprehensive history as well as the choice of examples in Chapter 2, I here want to briefly flag up questions of periodization and chronology. As to the first of these two, my thesis starts from the assumption that during the nineteenth century, there were two decisive changes in people's understanding of war.⁸⁷ First, in the late eighteenth and early nineteenth century, war – which had previously been regarded as a fact of life or also as a misfortune – came to be seen as a problem addressable by civil society. In this context, the emergence of peace societies in the aftermath of the Napoleonic Wars can be seen as one early example of an idea of war as an actionable problem.⁸⁸ And yet, as André Durand notes, during the first half of the nineteenth century, “the objective study of war as a phenomenon [...] had not yet been invented.”⁸⁹ This second change in people's understanding of war only began to take shape somewhat later, during the second half of the nineteenth century.⁹⁰ It is on this latter change, and on how it built

⁸⁷ For recent statements on the nineteenth century more generally, cf. Barry Buzan, George Lawson, *The Global Transformation: History, Modernity, and the Making of International Relations* (Cambridge, UK: Cambridge University Press, 2015); Jürgen Osterhammel, *The Transformation of the World: A Global History of the Nineteenth Century* (Princeton, NJ: Princeton University Press, 2014).

⁸⁸ Ceadel, *Origins of War Prevention*, ch. 1; André Durand, “Gustave Moynier and the Peace Societies,” *International Review of the Red Cross* 36, no. 314 (1996), 532-550. Weinke locates the emergence of the idea that war was not a concern of (warring) states alone a little later, in the second half of the 19th century (cf. Weinke, *Gewalt, Geschichte, Gerechtigkeit*, 10, 103; see also Goltermann, *Opfer*, 19-21).

⁸⁹ Durand, “Gustave Moynier,” 535.

⁹⁰ Torbjørn L. Knutsen, “The Origins of International Relations: Idealists, Administrators and the Institutionalization of a New Science,” in Andreas Gofas, Inanna Hamati-Ataya, Nicholas Onuf (eds.), *The SAGE Handbook of the History, Philosophy and Sociology of International Relations* (London, UK: SAGE, 2018), 193-207, at 195.

upon and extended the former, that I focus in this thesis. My rationale for this focus – and my main reason for foregoing its alternative, a periodization striving to cover the history of the problem of war comprehensively⁹¹ – is twofold. On the one hand, my intuition is that the two changes in understandings of war identified above inaugurated the ways in which we still seek to know about and act upon war today.⁹² On the other hand, I did not determine *a priori* the thesis' focus on war as a problem of knowledge and action; rather, I arrived at this focus through my work with archival sources. This way of proceeding then led me to forego comprehensive periodization in favour of a more fine-grained analysis of the manifold and often minute alterations of which the two overarching historical changes in understandings of the problem of war that I postulate consisted.

Periodization, in turn, depends on chronology. Of course, the notion of time as a universal, continuous, and linear sequence of events is an idea peculiar to modernity – and it is therefore another item to be historicized and problematized rather than taken for granted.⁹³ Not least because my empirical inquiry does not extend to pre- or otherwise non-modern examples, however, the historicization of modern chronological time cannot make for the main thrust of my thesis. Given this limitation, I call attention to the issue of modern chronological time – by inquiring, in the different historical examples I study, into modernity as a location in time from which to know

⁹¹ Indeed, many, especially early genealogical studies in IR aim for a comprehensive periodization of their respective objects of analysis (e.g. Jens Bartelson, *Genealogy of Sovereignty* (Cambridge, UK: Cambridge University Press, 1995); James Der Derian, *On Diplomacy* (Oxford, UK: Basil Blackwell, 1987)).

⁹² Of course, there were also other changes to “war” as an object of thought and action during the nineteenth century, for instance its decreasing functionality for inter-state politics (cf. Buzan, Lawson, *Global Transformation*, 265ff.). I will discuss these changes insofar as they impinge on the question that I am centrally concerned with in this thesis, namely war's becoming an actionable problem for actors other than states.

⁹³ For a historical problematization of the temporal assumptions underwriting contemporary post-conflict politics, cf. Berber Bevernage, *History, Memory, and State-Sponsored Violence: Time and Justice* (Abingdon, UK: Routledge, 2012). On modern temporality in the context of understanding war, cf. Goltermann, *Opfer*, 25; Joas, Knöbl, *Kriegsverdrängung*, 10f.; Weinke, *Gewalt, Geschichte, Gerechtigkeit*, 15f.

and address war, and by making explicit the different chronologies at play in my thesis.

Resulting from its dual focus on the problem of war and on genealogy, this thesis contains at least two chronologies: that of war's becoming problematic, and that of the genealogical work which I undertake to analyze this becoming. Ultimately, neither of these two temporal processes was a fully linear or continuous one. With regard to the historical process of war's becoming problematic, this assertion is substantiated theoretically in Chapter 2 and empirically corroborated in Chapters 3-5. As for my own research process, due less to methodological principles than to mundane organizational necessities, I did not study the different historical examples which my thesis engages in their chronological order.⁹⁴ Furthermore, within this already non-chronological process, my own understandings of the problem of war and of genealogy kept evolving. To give the reader an idea of how the twists and turns of this open-ended and, to be frank, rather challenging research process have felt, the order of the historical chapters of my thesis is not entirely chronological, as one might expect, but rather reflects how my research arrived at its understanding of and its arguments about the problems it studies, "war" and genealogy.⁹⁵

Plan of the thesis

The remainder of this thesis is structured into five main chapters, three reflective vignettes⁹⁶, an analytical conclusion, and an epilogue. Chapter 1 serves, by way of

⁹⁴ I first studied the Advisory Committee of Jurists (1920), then the Balkan Commission (1912-14), then the international jurists debating the Franco-German War (1870-73), and finally the IMTFE (1946-48).

⁹⁵ In a recent discussion of James Der Derian's genealogical work, Iver Neumann holds that it is "alright" for genealogy to be written fully chronologically because "readers are used to thinking from the past towards the future, and readers must be accommodated for a book to be legible." I disagree with this view: while it should of course be legible and comprehensible, a genealogy need not, in fact must not cater to the ways of thinking to which its readers are used (cf. Iver Neumann, "Poststructuralists Also Have a Duty of Methodological Care," *New Perspectives: Interdisciplinary Journal of Central & East European Politics and International Relations* 25, no. 3 (2017), 12-19, at 18).

⁹⁶ For a similar interspersing of substantive chapters with brief reflective interludes, see Law, *After Method*.

example, to set up as starting points the two main problems motivating this thesis: the problem of war as an object of knowledge and action, and the problem of genealogy as method. To this end, the first half of the chapter examines the example of the international politics of transitional justice. Specifically, I contend that transitional justice exemplifies a curious nexus of knowledge and action in which war constitutes a problem whose future recurrence can be prevented by means of knowledge about its past occurrence. Furthermore, I offer an initial argument in favour of genealogy as a way of producing critical insight into the preconditions and constitutive exclusions of this contemporary problem of war. The second half of Chapter 1 takes up this thread to consider the current condition of genealogy in IR as an example of the problem of method and critique. Here, I first argue that recent proposals of genealogy as a method in effect risk excluding genealogy's own conduct from the historical and critical scope of its analysis. Secondly, I show how early genealogical works in IR eschewed an understanding of genealogy as method and sought to be reflexive both conceptually and in practice.

As an alternative to genealogy as method, Chapter 2 proposes genealogy as history/critique, problematization, and critical praxis. First, through a consideration of Foucauldian genealogy in contrast to Foucauldian archaeology as well as to Nietzschean genealogy, I arrive at an understanding of genealogy as a kind of history which inquires into processes of emergence and as a kind of critique which aims to analyze the coming-about and the preconditions of our contemporary ways of being, knowing, and doing in order to render these ways changeable. Secondly, I discuss how the concept of "problematization," referring to the process of the becoming of a problem, serves to make sense of the processes of emergence that genealogy studies as well as of genealogy itself as part of these processes. I also explain a number of further key concepts, including those of "practice," "co-production," and "critical praxis." Thirdly, to explicate how the genealogy developed in this thesis amounts to a critical praxis, I explain key decisions I took in the course of my historical analysis, and

I offer a preview of my attempt, in conducting this historical analysis, to experiment with my own knowledge practices.

In Chapter 3, I turn my attention to a first historical example, the so-called Balkan Commission. Sponsored by the Carnegie Endowment for International Peace, this commission conducted an inquiry into the Balkan Wars of 1912 and 1913. The chapter analyzes contending formulations of war as a legal, economic, and moral problem, as well as how these rationally structured formulations of war as problematic were proposed to counter dialectically structured ones. Furthermore, the chapter inquires into the commission of inquiry as an institutional form, into the commissioners' emerging practices of looking and of writing, and thus into their purportedly "scientific" way of knowing. Finally, the chapter explores the assumption, encapsulated in the commissioners' notions of "civilization," that European modernity made for a privileged spatio-temporal location from which to problematize war.⁹⁷

In addition, Chapter 3 also begins the experimentation with my knowledge practices. Here, I focus on and attempt to subvert one particular practice of thinking: the practice of formulating working hypotheses. In positivist research, the practice of formulating working hypotheses serves to distance us from that into which we inquire, producing us as epistemic subjects external to the objects of our inquiries. Countering this, I formulate working hypotheses that seek to pull us, as subjects of knowledge, back into to the analysis. To this end, the working hypotheses which I formulate, by bundling the chapter's historical insights, make more acute the empirical materials which the chapter affords for enabling critical work on the contemporary problem of war.

Following up on the findings of Chapter 3, Chapters 4 and 5 focus on legal formulations of the problem of war, on legal ways of knowing war, and on assumptions about "civilization" and the vanguard role of modern European subjects in overcoming the problem of war. Chapter 4 analyzes archival materials pertaining

⁹⁷ This thesis does not look at science or civilization substantially, but only insofar as claims are being made about them in the primary sources – insofar as they are notions used by one or another commissioner, for instance. To indicate this, I use these terms in quotation marks.

to two ultimately unrealized schemes for an international criminal tribunal devised, some fifty years apart from each other, by two groups of international jurists congregating in the aftermath of the Franco-German War and the First World War. Studying the writings of these two groups, I trace different ways of rendering war and its violences into legal problems – into civil wrongs, illegalities, offenses, violations of the law, and finally, into crimes. I also discuss a number of differences between the two groups’ ways of knowing war, emphasizing in particular their divergent ways of taking into account empirical evidence. Lastly, I highlight in how far both groups understood themselves as epistemologically capable subjects by distinguishing themselves within a “civilizational” hierarchy.

Thereupon, Chapter 5 zooms in even more closely on war as a particular kind of legal problem, namely, on war as crime. It was in the aftermath of the Second World War that war was fully criminalized for the very first time. Out of the over-abundant archives pertaining to this criminalization, I focus on the dissents which were issued by three judges on the bench at the IMTFE in Toyko – Henri Bernard from France, Bert Röling from the Netherlands, and Radhabinod Pal from India. On the basis of these primary sources, the chapter probes different approaches – and objections – to criminalization as a way of rendering war a legal problem, as well as different understandings of the international as the realm in which this criminalization was to be effected. Secondly, I consider the three dissenting judges’ contentions regarding their colleagues knowledge practices, and I discuss in how far, in the example of the IMTFE, the political nature of knowledge consisted not only in knowledge’s instrumentalization for political purposes, but also resided in the subject positions that made presumably true knowledge of Japan’s conduct of the war possible. Finally, I focus on how the three dissenting judges conceived of war not only as a legal problem, but more broadly as a problem of international politics, as well as on their and their colleagues views on “civilized” warfare and on these views’ underlying assumptions about war-time violence as rational, controllable, and ethical.

In addition, Chapters 4 and 5 also take up the findings of my analysis of the Balkan Commission in a practical way. To this end, Chapter 4 experiments with practices of writing. The chapter is written up as a collection of fragments, pieces, and shards of insights found within the archival materials. Rather than piecing these fragments together into a comprehensive analytical narrative, I only order them roughly, more or less according to the thesis' three main historical themes (the problem of war, ways of knowing war, and "civilization" and European modernity as locations from which to know about and take action against war). Thereby, the chapter lays open and breaks with the practices through which I put together the other chapters of this thesis and attempts to counteract the notion, perhaps conveyed by these other chapters, that I wrote the thesis from a position outside the history I was writing.

In Chapter 5, in turn, I get to work on my practices of looking. Whereas in previous chapters, I aimed for a comprehensive view of the relevant archives and often focused on the presumably most central primary sources, in this chapter I inspect the problematization of war through a very small number of documents which, moreover, are located on the margins of the vast body of primary sources. In this way, and as I further explain in the final reflective vignette, the chapter attempts to cast a look which aims not to identify, but rather to disperse its objects and dissipate its subjects, and which in doing so undoes the possibility of a stable perspective. Thereby, the chapter emphasizes that our view is always only partial, and that, as Foucault once put it, "knowledge is perspective."⁹⁸

In the conclusion, I draw together the different threads running through the thesis. First, I gather the thesis' insights on the historical emergence of the problem of war in international politics and propose these insights as materials for getting to work on our contemporary present. I point out some of the co-productions of formulations of the problem of war and ways of knowing war as well as some of the constitutive exclusions of how war has been conceived of and related to. I then raise a number of

⁹⁸ Michel Foucault, "Nietzsche, Genealogy, History," in Paul Rabinow (ed.), *The Foucault Reader* (New York, NY: Penguin Books, 1991 [1984]), 76-100, at 90.

questions about how war constitutes a problem of international politics today. Finally, I argue that our contemporary ways of problematizing war rely on and reproduce the assumption that only those subjects who are not themselves part of the problem of war are epistemologically, politically, and ethically capable of addressing it.

Secondly, I compile the thesis' insights into genealogy as a way of studying international politics. In its labour to undo genealogy as method, I contend, the thesis contributes to a problematization of and constitutes an experimentation with our ways of knowing – and thereby offers an example of what it could mean to understand and practice genealogy as critique. The discussion concludes by charting out possible future lines of conversation between genealogy and pragmatism, critical security studies, and assemblage thinking.

In the end, however, my project's core concern lies with the problem of war itself and with the means we have to work on it. In light of this, what I first and foremost hope for my thesis to achieve is to provoke in its readers a curiosity about the hard and precarious, urgent and productive work on our problems, our ways, and our selves that a critical questioning of our contemporary problematization of war requires.

Insofar as the “we” implied in this last sentence, and in this introduction more generally, is a somewhat oscillating one, this is because the thesis is written with different readers in mind. To the reader critically interested in war as an object of thought and action, the thesis proposes to subject to careful scrutiny not only conditionally positive conceptions of war as, for instance, politically productive or ethically good, but also understandings of war as genuinely problematic. To the fellow genealogist, the thesis suggests that in our efforts at history and critique, we ought to try even harder to not take as given our ways and practices of knowing. For the reader interested in issues of methods and critique in IR more generally, the thesis puts forward history and reflexivity as an additional mode of the political (and critical) life of methods. Finally, the reader coming to the thesis with a general background in IR – and, perhaps, a concern with the study and amelioration of the problem of war, or with a disquiet at what this study occludes – is also invited to come along. I hope that

in the pages to follow, they might find a few more things that give them pause, and that they might leave the thesis to reconsider the ways in which we all too often take for granted how war is a problem and how we are capable of knowing and addressing it.

Chapter 1

Starting points: “war” and method as research problems

The genealogy offered in this thesis starts from the assumption that, at present, “war” and method constitute problems – and that they therefore make for worthwhile subjects of critical inquiry. To offer a rationale for this starting point, in this chapter I discuss two specific literatures – the cross-disciplinary literature on transitional justice, and the IR literature on genealogy – with an eye towards elucidating how they exemplify what might be problematic about “war” and method.

To explain this exemplifying procedure, I need to briefly anticipate an argument that I will discuss in more detail in Chapter 2. This is the argument that, as Bartelson puts it, genealogy is “*effective* by virtue of being *episodical* and *exemplary*.”¹ As an effective analysis of the emergence of a problem, genealogy traces the production of this problem in different historical moments, starting with an analysis of its present formation. Moreover, to effectively contribute to rendering this existing problem further problematic, genealogy does not provide a comprehensive account of the emergence of a problem, but offers an analysis of different examples within each of the historical moments it analyses – including the present moment.² In this chapter, therefore, I proceed by way of example to preliminarily clarify how “war” and method constitute problems and thereby make for this thesis’ two-fold starting point.

At the same time, however, this chapter also undertakes to provide an account of how I came to this starting point. At the outset of this project, what is now a concern with “war” and with method looked decidedly different: I was interested in transitional justice’s assumption that knowing the truth about past violence could hinder future violence, and I was intrigued by the idea of writing a genealogy of this assumption, or

¹ Bartelson, *Genealogy of Sovereignty*, 73, italics in original.

² Cf. Foucault, “Nietzsche, Genealogy, History,” 358ff.

a history of how it had come about and become taken for granted. Throughout the process of the research, however, these initial interests have reconfigured themselves more than once. Indeed, in later parts of this thesis I will develop an argument for genealogy as a continuous reconfiguration of its own interests, or for genealogy as curiosity. To set the scene for this argument, in this chapter I want to take on the task of explicating my project's initial points of departure and attempting to locate within these points some features of the problems that, in the meantime, this thesis has come to be concerned with.

The chapter comes in two parts. In the first part, I look at transitional justice as a particular kind of international post-atrocity politics³ to trace, within these politics, the contours of war as an object that can be known and acted upon. In the chapter's second part, in turn, I review a range of genealogical works in the discipline of IR to propose method as a problem in and for critical IR scholarship. Overall, this chapter thus identifies two problems as starting points for the thesis: war as an object of knowledge and action, and methods as ready-made analytical instruments. At the same time, however, the chapter also bespeaks how doing a genealogy might lead one to see one's initial starting points anew.

Seeking truth to hinder war: the example of transitional justice

In all different kinds of post-atrocity situations today, establishing the truth about what happened in order to address and deal with this past violence is one of the mainstays of the international politics of transitional justice. In response to violences such as torture, forced disappearances, violent conflict, genocide, colonialism, and indentured labour, actors ranging from civil society organizations and newly incumbent governments to donor countries and international organizations insist on

³ To refer to transitional justice as a politics concerned with the aftermaths of very different kinds of violence, I borrow the term "post-atrocity" from Claire Moon (Claire Moon, "Healing Past Violence: Traumatic Assumptions and Therapeutic Interventions in War and Reconciliation," *Journal of Human Rights* 8, no. 1 (2009), 71-91).

transitional justice and its truth-seeking instruments, first and foremost criminal prosecutions and truth commissions. For instance, the United Nations have recognized the *right to the truth* as an emerging norm of customary international law and a human right in the making⁴ and have appointed a *UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*.⁵ Those who call for and implement transitional justice's instruments do not take truth as an end in itself, but – as the mandate of the UN Special Rapporteur aptly illustrates – link the establishment of truth about past violence to the prevention of future violence. In Rosemary Nagy's words, contemporary transitional justice is based on a "fairly settled consensus" about the purposiveness, indeed the essential necessity of truth for the non-recurrence of violence.⁶

It was this "knowledge-action-nexus,"⁷ to borrow Claire Moon's term, that initially got me interested in transitional justice. One of the reasons for this interest was that transitional justice's consensus about the imperative of searching for the truth about past violence seemed to be built on empirically shaky ground: as research had begun to look into truth-seeking's effects, the emerging evidence suggested that these effects were less unequivocally positive than truth-seeking's advocates had assumed.⁸ If this

⁴ United Nations, "Right to the Truth," A/RES/68/165 (2014); United Nations, "Promotion and Protection of Human Rights: Study on the Right to Truth," E/CN.4/2006/91 (2006).

⁵ United Nations, "Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence," A/HRC/RES/18/7 (2011).

⁶ Rosemary Nagy, "Transitional Justice as a Global Project: Critical Reflections," *Third World Quarterly* 29, no. 2 (2008), 275-289. The UN Secretary General's 2004 report on "The rule of law and transitional justice in conflict and post-conflict societies" defines transitional justice as "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof" (United Nations, "The rule of law and transitional justice in conflict and post-conflict societies," S/2004/616* (2004); cf. Ruti Teitel, "Transitional Justice Genealogy," *Human Rights Journal* 16 (2003), 69-94).

⁷ Claire Moon, "What One Sees and How One Files Seeing: Human Rights Reporting, Representation and Action," *Sociology* 46, no. 5 (2012), 876-890.

⁸ E.g. Erin Daly, "Truth Skepticism: An Inquiry into the Value of Truth in Times of Transition," *International Journal of Transitional Justice* 2, no. 1 (2008), 23-41; David Mendeloff, "Truth-Seeking, Truth-Telling, and Post-Conflict Peacebuilding: Curb the Enthusiasm?," *International Studies Review* 6, no. 3 (2004), 355-380; Tricia D. Olsen, Leigh A. Payne, Andrew G. Reiter, "The Justice Balance – When

was so, however, then how had transitional justice's consensus that knowing the truth about past violence would help prevent future violence become so taken for granted? This was what I wanted to write a genealogy of.

Over the course of developing this genealogy, however, my preoccupation with transitional justice changed. My indiscriminating interest in the many kinds of violence that transitional justice seeks to address was replaced by a concern with war and war-time violence in particular, and my initial fascination with understandings of "truth" was substituted with a focus on "war" as an object of knowledge and action. Transitional justice turned from *the* example I was studying into one of many examples, and what I had found curious about transitional justice – namely, the knowledge-action-nexus it exemplifies – became a curiosity about how this nexus has parallels in the discipline in IR (in which we often claim that we study wars and violent conflicts not least to learn how to hinder their future occurrence).⁹ Throughout the project, that is, my interest in transitional justice contracted and expanded and in the end completely shifted.

Therefore, by working through the example of the international politics of transitional justice, my aim in this first part of the chapter is twofold. On the one hand, to establish a starting point for the genealogical analysis to come, I seek to trace some of the contemporary contours of war as an object of knowledge and action within transitional justice. On the other hand, to render explicit the starting point of this starting point, I attempt to account for how my interest in transitional justice's taken for granted assumption about the value of truth began to reconfigure into a curiosity about war as this kind of object.

Transitional Justice Improves Human Rights and Democracy," *Human Rights Quarterly* 32, no. 4 (2010), 980-1007.

⁹ For examples of IR research on transitional justice, cf. Michal Ben-Josef Hirsch, "Ideational Change and the Norm of Truth and Reconciliation Commissions," *European Journal of International Relations* 20, no. 3 (2014), 810-833; David P. Forsythe, *Human Rights in International Relations*, 3rd ed. (Cambridge, UK: Cambridge University Press, 2012), ch. 4.; Leslie Vinjamuri, Jack Snyder, "Advocacy and Scholarship in the Study of International War Crime Tribunals and Transitional Justice," *Annual Review of Political Science* 7 (2004), 345-362.

To this end, I first sketch a number of transformations of transitional justice's understanding of "truth" (as well as of its related understandings of "justice" and "reconciliation"), showing how the meaning and valuation of knowledge about past violence have been subject to historical change. Secondly, I trace how, at the intersection of several broader developments within transitional justice, war has come to form an object that can be known and acted upon. Finally, discussing possible avenues for criticizing this taken for granted assumption about "truth" and its instrumentality for preventing future violence, I note how conventional criticisms leave undisturbed the political life of transitional justice's analytical categories, and I outline a number of alternative paths of critique more capable of attending to what these categories *do* in the world. The section ends with an argument for a genealogy of the "knowledge-action-nexus" exemplified by transitional justice and its assumptions about the purposiveness of knowledge of past war for counteracting future war.

A brief history of "truth" in transitional justice

In the early years of transitional justice, "truth" was usually conceived of as a prerequisite for or a second-best alternative to "justice," and furthermore as opposed to "reconciliation." For instance, the Argentinian *Comisión Nacional sobre la Desaparición de Personas* (National Commission for the Disappearance of Persons, CONADEP), established in December 1983 to inquire into the disappearances ordered and carried out by the armed forces during the preceding seven years of military government, was mandated not only to prepare a final report, but also to pass on its findings to the courts¹⁰, leading to the trial and conviction of a number of senior members of the

¹⁰ In fact, over the course of its work CONADEP reinterpreted its mandate of being a mere "intermediary between the people and the justice system" to assume a more active role: it enlarged the scope of its inquiry to also include the identification of perpetrators, and it also debated, on its own initiative, whether the evidence collected should be handed over to military or to civilian courts (Emilio Crenzel, "Argentina's National Commission on the Disappearance of Missing Persons: Contributions to Transitional Justice," *International Journal of Transitional Justice* 2, no. 2 (2008), 173-191, at 191).

junta.¹¹ In other Latin American contexts, however, criminal trials were unattainable, and investigatory commissions were employed on their own, thus making of “truth” a substitute for “justice.”¹² A case in point is Chile, where the *Comisión Nacional de Verdad y Reconciliación* (National Commission for Truth and Reconciliation), appointed in 1990 to investigate killings carried out by the Pinochet regime, was from the outset intended not in preparation, but in lieu of criminal trials.¹³ It was also in the Chilean context that “reconciliation” became, as Bronwyn Leebaw has shown, “invoked as a short hand for compromises and bargains with the old regime”¹⁴ – causing a prominent Argentinian lawyer and member of the human rights movement, Juan E. Mendez, to lament that “the word [reconciliation] has achieved a bad name.”¹⁵ Overall, transitional justice in the 1980s and early 1990s assumed that justice and truth were “intertwined demands”¹⁶ which were conjointly in opposition to reconciliation. The idea that the truth about past violence would help to prevent future violence, however, seems to have been nowhere in sight.

During these early days of transitional justice, “truth” as an aim of transitional justice became associated with the instrument of the investigatory commission, while “justice” was firmly associated with trials in civilian or military courts. Investigatory commissions were a new kind of instrument: the Argentinian CONADEP, which had been designed as a “commission of ‘notables’” modelled after civil society commissions set up by the US Congress¹⁷, later itself became a model for investigatory commissions in other Latin American countries. As one contemporary commentator

¹¹ Priscilla Hayner, *Unspeakable Truths: Facing the Challenges of Truth Commissions* (London, UK: Routledge, 2001), at 34.

¹² Cf. Ben-Josef Hirsch, “Ideational Change,” 817; Saskia Nauenberg, “Spreading the truth: How truth commissions address human rights abuses in the world society,” *International Sociology* 30, no. 6, 654-673, at 658f.

¹³ Hayner, *Unspeakable Truths*, 35f.

¹⁴ Bronwyn Leebaw, “The Irreconcilable Goals of Transitional Justice,” *Human Rights Quarterly* 30, no. 1, 95-118, at 102.

¹⁵ Juan E. Mendez, “Accountability for Past Abuses,” *Human Rights Quarterly* 19, no. 2 (1997), 255-282, at 274.

¹⁶ Weschler quoted in Paige Arthur, “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice,” *Human Rights Quarterly* 31, no. 2 (2009), 321-367, at 353.

¹⁷ Crenzel, “Argentina’s National Commission on the Disappearance of Missing Persons,” 177.

pointed out, the truth-seeking that these early commissions engaged in “often end[ed] up confirming widely-held beliefs about what has happened and who is responsible” so that “truth commissions might be described more accurately as acknowledging the truth rather than shaping it.”¹⁸ While these early truth commissions’ record in actually achieving “truth” was judged to be a mixed one, they were principally held to be able to achieve “a full and fair” account.¹⁹ By contrast, their capacity for delivering “justice” was seen as categorically limited: Chilean human rights lawyer José Zalaquett, for instance, maintained that truth commissions could achieve no more than “justice to the extent possible,”²⁰ and his Argentinian colleague Mendez found that truth commissions made for “a poor alternative to justice.”²¹ In the end, that is, whereas truth commissions might deliver a full account of what happened, when it came to retribution and accountability they could be no more than second-best substitutes for trials.

The South African Truth and Reconciliation Commission (TRC), inaugurated in December 1995, and the so-called “Truth v. Justice”-debate which ensued in its wake, brought with them profound changes to this configuration of “truth,” “justice,” and “reconciliation” in transitional justice.²² In the practice of the TRC, individuals who confessed to having committed a violent felony of a political nature could thereupon be granted amnesty.²³ Consequently, as Chandra Lekha Sriram argues, truth commissions began to be “understood to entail an exchange of truth for justice,”²⁴ leading to the emergence of a dichotomous view of “truth” and “justice.” At the same

¹⁸ Priscilla Hayner, “Fifteen Truth Commissions – 1974 to 1994: A Comparative Study,” *Human Rights Quarterly* 16, no. 4 (1994), 597-655, at 607.

¹⁹ Hayner, “Fifteen Truth Commissions,” 600.

²⁰ Zalaquett cited in Ben-Josef Hirsch, “Ideational Change,” 821.

²¹ Mendez, “Accountability,” 267. Similarly, Margaret Popkin and Naomi Roht-Arriaza concluded that in the Chilean case, “truth became in effect a substitute, not a complement, to justice.” (Margaret Popkin, Naomi Roht-Arriaza, “Truth as Justice: Investigatory Commissions in Latin America,” *Law & Social Inquiry* 20, no. 1 (1994), 79-116, at 113).

²² Cf. Ben-Josef Hirsch, “Ideational Change,” 817.

²³ Cf. Hayner, *Unspeakable Truths*, 43.

²⁴ Chandra Lekha Sriram, “Transitional Justice and Peacebuilding,” in Chandra Lekha Sriram, Suren Pillay (eds.), *Peace versus Justice? The Dilemmas of Transitional Justice in Africa* (Suffolk: James Currey, 2011), 1-18, at 7.

time, the TRC successfully worked to do away with the notion of “reconciliation” as, in the words of its critic Mahmood Mamdani, “an unprincipled embrace of political evil.”²⁵ Resulting from these shifts, many in the growing field of transitional justice began to think of truth commissions as no longer a lesser, but in fact a better alternative to trials.²⁶ However, concurrently to the South African TRC, there had also been a number of efforts at implementing criminal accountability, most prominently through the International Criminal Tribunals for the Former Yugoslavia (ICTY) and for Rwanda (ICTR)²⁷, and hence the position that truth commissions were preferable to trials required explicit justification. During the “Truth v. Justice” debate²⁸, a controversy waged mostly between political theorists and legal scholars, truth commissions were argued to be more efficient and more effective than trials: they were seen as less time-consuming, less expensive, and less socially divisive.²⁹ Taken together, the South African TRC and the “Truth v. Justice” debate uncoupled “truth” from “justice” and linked it to “reconciliation,” entailing a revaluation of “reconciliation” as a goal and of truth commissions as instruments of transitional justice.

In addition, the South African TRC also brought with it changes in the signification of the terms “truth,” “justice,” and “reconciliation.” Whereas previous commissions had worked on the basis of a more or less unitary idea of “truth” as objective fact, the TRC broke up the truth it sought into four different kinds³⁰: “factual” and “forensic” truth, or objective knowledge established by means of social-scientific methods; “personal” and “narrative” truth, or the stories victims told in the TRC’s public hearings; “social” or “dialogue” truth, or the awareness and comprehension established through societal

²⁵ Mahmood Mamdani, “Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC),” *Diacritics* 32, no. 3-4 (2002), 33-59, at 33.

²⁶ Cf. Ben-Josef Hirsch, “Ideational Change,” 812.

²⁷ Cf. Christine Bell, “Transitional Justice, Interdisciplinarity and the State of the ‘Field’ or ‘Non-Field,’” *International Journal of Transitional Justice* 3, no. 1 (2009), 5-27, at 8.

²⁸ Indicatively, cf. Robert I. Rotberg, Dennis Thompson (eds.), *Truth V. Justice: The Morality of Truth Commissions* (Princeton, NJ: Princeton University Press, 2000); Hayner, *Unspeakable Truths*, ch. 7.

²⁹ Ben-Josef Hirsch, “Ideational Change,” 819f.

³⁰ Truth and Reconciliation Commission of South Africa, *Truth and Reconciliation Commission of South Africa Report* (Cape Town, South Africa: Juta & Co, 1998).

interactions surrounding the TRC; and “restorative” truth, or acknowledgement and validation of what happened.³¹ This last kind of truth was furthermore linked to a new notion of “justice.” As formulated by Desmond Tutu, the Chair of the TRC,

“retributive justice [...] is not the only form of justice [...] there is another kind of justice, restorative justice, which was characteristic of traditional African jurisprudence. Here the central concern is not retribution or punishment but [...] the restoration of broken relationships.”³²

Within restorative justice thus conceived, the assumption was that amnesty and truth-telling furthered “reconciliation” – implying, as its flipside, an equation of retributive justice with vicious cycles of violence.³³ Overall, the TRC produced, as Moon shows, “a new set of creeds”: “truth, catharsis, healing, reconciliation.”³⁴ It was within this set of beliefs that, for the first time, knowledge of past violence was prominently linked to the prevention of future violence. Here, then, was one of the origins of the taken for granted assumption which had gotten me interested in transitional justice in the first place.³⁵

However, the next major reversal of transitional justice’s composition was already in the offing: for in the beginning of the new millennium, the assumption of a dilemma of “truth *versus* justice” was displaced by the notion that the different aims and instruments of transitional justice were compatible with one another, indeed mutually

³¹ Cf. Audrey R. Chapman, Patrick Ball, “The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala,” *Human Rights Quarterly* 23, no. 1, 1-43, at 10f. As Chapman and Ball highlight, “[t]he TRC’s ‘forms of truth’ encode as ‘truths’ ideas that other commissions may have had but have expressed as goals to be achieved, not as alternative-and competing-forms of truth” (Chapman, Ball, “Truth of Truth Commissions,” 10): what was new were not these ideas as such, but their subsumption under the term “truth.”

³² Tutu cited in Claire Moon, “Healing Past Violence,” 81, emphasis in original.

³³ Cf. M. Cherif Bassiouni, “Searching for Peace and Achieving Justice: The Need for Accountability,” *Law and Contemporary Problems* 59, no. 4, 9-28, at 23; Elizabeth Kiss, “Moral Ambition within and beyond Political Constraints,” in Robert I. Rotberg, Dennis Thompson (eds.), *Truth V. Justice: The Morality of Truth Commissions* (Princeton, NJ: Princeton University Press, 2000), 68-99, at 73.

³⁴ Moon, Claire, “Healing Past Violence,” 71.

³⁵ Cf. Michal Ben-Josef Hirsch, *And the Truth Shall Make You Free: The International Norm of Truth and Reconciliation Commissions* (Ph.D. dissertation, Massachusetts Institute of Technology, June 2009).

reinforcing.³⁶ In this “holistic” take on transitional justice³⁷, the idea, in Jon Elster’s terms, was that “all good things necessarily go together,”³⁸ or as Kimberly Theidon put it, that “more truth = more justice = reconciliation.”³⁹ Transitional justice’s instruments ceased being conceived of as alternative choices; instead, the question became how best to combine the work of criminal trials with that of truth commissions.⁴⁰ What is more, “truth” was no longer associated exclusively with truth commissions, but was now seen as a goal of all of transitional justice’s instruments.⁴¹

What can be gleaned from this brief history of “truth” in transitional justice? Most significantly, even in this circumscribed context, the above discussion shows that truth has a history – and that this history can be accessed in different ways. One could, as I had imagined at the outset, look at changing understandings and valuations of “truth.” But one could also look at the history of the instruments through which truth was to be found, i.e. at criminal trials and commissions of inquiry – and indeed, this is how I set out to research several of the chapters to come. Wondering about and looking into the history of these instruments, however, also opened up several additional paths of inquiry, and hence turned out to be one of the ways in which my interest in transitional justice began to shift and change.

From “reconciliation through truth” to war as an object of knowledge and action

To locate war as an object of knowledge and action within transitional justice, I here

³⁶ Bell, “Transitional Justice and the State of the ‘Field,’” 9. On the now obvious “fallacy of the dichotomy of truth versus justice,” cf. Ellen Lutz, “Transitional justice: Lessons Learned and the Road Ahead,” in Naomi Roht-Arriaza, Javier Mariezcurrena (eds.), *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* (Cambridge, UK: Cambridge University Press, 2006), 325–341, at 326f.

³⁷ Rebekka Friedman, *Competing Memories: Truth and Reconciliation in Sierra Leone and Peru* (Cambridge, UK: Cambridge University Press, 2017), at 35.

³⁸ Jon Elster, “Justice, Truth, Peace,” *Nomos* 51 (2012), 78–97, at 78.

³⁹ Kimberly Theidon, “Editorial Note,” *International Journal of Transitional Justice* 3, no. 3 (2009), 295–300, at 296.

⁴⁰ Cf. Alison Bisset, *Truth Commissions and Criminal Courts* (Cambridge, UK: Cambridge University Press, 2012).

⁴¹ Cf. Chapman, “Truth-Finding,” 93.

want to look at three developments which characterize the field's by now almost four decades long history: the heightening of the expectations associated with transitional justice's search for "truth," the broadening of its scope of application to include different kinds of violence, and the expansion of its spectrum of framings and formulations for deeming these violences problematic.

A first noteworthy development within transitional justice – and one which the previous section has already hinted at – has been the expansion of the range of aims which truth-seeking is hoped to achieve. As Popkin and Roht-Arriaza explain, in the context of the early transitional justice processes in Latin America, truth-seeking was expected to contribute to

“creating an authoritative record of what happened; providing a platform for the victims to tell their stories and obtain some form of redress; recommending legislative, structural, or other changes to avoid repetition of past abuses; and establishing who was responsible and providing a measure of accountability for the perpetrators.”⁴²

Notably, Popkin and Roht-Arriaza did not presume that knowledge of past violence would directly contribute to the prevention of future violence; rather, they imagined that the truths established by transitional justice could inform decisions about changes to a country's political system. More generally, they sensed that there were “clear limits” to how much truth transitional justice could expect to establish, and they warned that calls for truth-seeking to contribute to accountability and reconciliation ought to be careful not to “raise unrealistic expectations.”⁴³

Soon, however, these comparatively modest expectations about what “truth” was capable of achieving within transitional justice processes were heightened markedly.⁴⁴ As Moon shows, within the South African TRC's practice, both individual victims and perpetrators and the South African nation as a whole were understood to be “amenable to the application of therapeutic assumptions (denial, healing, catharsis,

⁴² Popkin, Roht-Arriaza, “Truth as Justice,” 79.

⁴³ *Ibid.*, 116.

⁴⁴ Of course, in an absolute sense these are difficult to achieve, ambitious goals.

closure) and technologies (truth-telling, confession)."⁴⁵ From this assumption, it was only a small step towards the presupposition that "truth" could facilitate not only "individual recovery," but also "societal reconstruction."⁴⁶ At this juncture within the history of transitional justice, "truth," through mechanisms ranging from social healing, justice, and public education to preemption and deterrence, came to be seen, in David Mendeloff's terms, as "essential to achiev[ing] lasting, 'self-enforcing' peace."⁴⁷ It was in this sense that the report of the Sierra Leonean Truth and Reconciliation Commission declared that "[i]t is only through generating such understanding that the horrors of the past can effectively be prevented from occurring again. Knowledge and understanding are the most powerful deterrents against conflict and war."⁴⁸ Hence, as truth-seeking in transitional justice became exactly the kind of "panacea" of which Popkin and Roht-Arriaza had warned⁴⁹, among the problems to which it was thought to constitute a remedy were violent conflict and war.

A second development within transitional justice, closely entangled with the heightening of expectations associated with truth-seeking, has been the broadening of its scope of application to include different kinds of violence. The early transitional justice processes in Argentina and Chile were set up during negotiated transitions from military dictatorships to democracy and constituted a response to forced disappearances, torture, and summary killings carried out by agents of the state.⁵⁰ Since then, transitional justice has seen a progressive expansion of the range of violences in response to which it has been employed.⁵¹ In Guatemala, Rwanda, and the former Yugoslavia, for instance, transitional justice's instruments have been used to investigate instances of genocidal violence.⁵² Transitional justice has also been used to

⁴⁵ Moon, "Healing Past Violence," 82.

⁴⁶ Laplante, Theidon, "Truth with Consequences," 235.

⁴⁷ Mendeloff, "Truth-Seeking, Truth-Telling," 355, 358.

⁴⁸ Sierra Leone Truth and Reconciliation Commission cited in Chapman, "Truth-Finding," 92.

⁴⁹ Popkin, Roht-Arriaza, "Truth as Justice," 116.

⁵⁰ Cf. Ben-Josef Hirsch, "Ideational Change," 811, 817; Popkin, Roht-Arriaza, "Truth as Justice," 81.

⁵¹ Cf. Ben-Josef Hirsch, "Ideational Change," 823ff.

⁵² Cf. Commission for Historical Clarification, *Guatemala – Memory of Silence: Report of the Commission for Historical Clarification (Conclusions and Recommendations)*, available online at www.aaas.org/sites/default/files/migrate/uploads/mos_en.pdf (accessed May 29, 2018); Statute of the

investigate different kinds of “historical” violence, such as the violence of settler-colonialism in Australia and Canada or also the violence of slavery and indentured labour in Mauritius.⁵³ Finally, transitional justice has also become a way of investigating, in the aftermaths of internal as well as international wars, instances of war-time violence against civilians including both individual homicides and massacres of entire communities.⁵⁴ Hence, as transitional justice’s originally narrow focus on transitions to democracy broadened to include within its ambit post-conflict and peacebuilding situations⁵⁵, it became increasingly conceivable to view war as a problem for transitional justice to address.

Concurrently to these expansions of the expectations associated with truth-seeking and of the range of violences that transitional justice seeks to deal with, a third development within the field which is of relevance here is its broadening of the spectrum of frames and formulations through which it deemed these violences to constitute addressable problems. Unsurprisingly for a field founded mostly by jurists, the violences which transitional justice intended to counteract were initially framed as legal problems, and legal formulations of the problem at stake continue to play a key role in transitional justice today. From the very early days of transitional justice up to and including the South African TRC, its instruments were meant specifically to

International Criminal Tribunal for Rwanda, Art. 2; Updated Statute on the International Criminal Tribunal for the Former Yugoslavia, Art. 4.

⁵³ Cf. Rosabelle Boswell, “Can Justice Be Achieved for Slave Descendants in Mauritius?,” *International Journal of Law, Crime and Justice* 42, no. 2 (2014), 146-161; Rosemary Nagy, “The Scope and Bounds of Transitional Justice and the Canadian Truth and Reconciliation Commission,” *International Journal for Transitional Justice* 7, no. 1 (2013), 52-73; Orford, “Commissioning the Truth.”

⁵⁴ Cf. Ben-Josef Hirsch, “Ideational Change,” 824; Hayner, *Unspeakable Truths*, 39 and 48. A recent example of this is the Russo-Georgian war of August 2008 (cf. Magdalena Frichova, *Transitional Justice and Georgia’s Conflicts: Breaking the Silence* (New York, NY: International Center for Transitional Justice, 2009); International Criminal Court, “Situation in Georgia: Decision on the Prosecutor’s request for authorization of an investigation,” ICC-01/15, 27 January 2016).

⁵⁵ Cf. Eric Brahm, “Uncovering the Truth: Examining Truth Commission Success and Impact,” *International Studies Perspectives* 8, no. 1, 16-35; Renée Jeffery, Hun Joon Kim, “New Horizons: Transitional Justice in the Asia-Pacific,” in Renée Jeffery, Hun Joon Kim (eds.), *Transitional Justice in the Asia-Pacific* (Cambridge, UK: Cambridge University Press, 2014), 1-32; Meera Sabaratnam, “The Liberal Peace? An Intellectual History of International Conflict Management, 1990-2010,” in Susanna Campbell, David Chandler, Meera Sabaratnam (eds.), *A Liberal Peace? The Problems and Practices of Peacebuilding* (London, UK: Zed Books, 2011), 13-30.

respond to “gross human rights violations.”⁵⁶ An additional legal framing of the problem was introduced into transitional justice by the ICTY and the ICTR’s prosecution and trial of instances of violence constituting different kinds of international crimes – including breaches of the Geneva Conventions of 1949, violations of the laws and customs of war, and crimes against humanity. From around the turn of the millennium, transitional justice has regularly used the two legal lenses provided by human rights law and international criminal law conjointly.⁵⁷ What is more, the two legal formulations of the problems of violence that transitional justice seeks to address have found a permanent institutional form in the jurisdictional practice of different regional human rights courts and the International Criminal Court (ICC).⁵⁸ Finally, and of particular interest for this thesis, the jurisdiction of the ICC has recently been extended to include the crime of aggression, signifying the renewed criminalization of war as an instrument of inter-state politics.⁵⁹

At least since the South African TRC, however, there have also been attempts at broadening the range of frames and formulations through which transitional justice could deem problematic the different violences it sought to deal with. The TRC, for one, coupled its framing of the violences of apartheid as “gross violations of human rights” with religious and therapeutic tropes that made of these human rights violations problems necessitating redemption and healing. While this legal-religious-therapeutic formulation was widely acclaimed as a model for other cases of transitional justice⁶⁰, it has also been criticized for obliterating the collective, systemic

⁵⁶ Cf. Ben-Josef Hirsch, “Ideational Change,” 811 and 817; Popkin, Roht-Arriaza, “Truth as Justice.”

⁵⁷ The Sierra Leonean TRC, for instance, was mandated to address “violations and abuses of human rights and international humanitarian law” (Truth and Reconciliation Commission Act, Section 6(1) (2000), cited in William Schabas, “Amnesty, the Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone,” *U.C. Davis Journal of International Law and Policy* 11, no. 1 (2004), 145-170, at 152).

⁵⁸ Cf. Teitel, *Globalizing Transitional Justice*, xviii.

⁵⁹ Cf. Claus Kreß, “On the Activation of ICC Jurisdiction over the Crime of Aggression,” *Journal of International Criminal Justice* 16, no. 1 (2018), 1-17.

⁶⁰ Cf. Lyn S. Graybill, *Truth and Reconciliation in South Africa: Miracle or Model?* (Boulder, CO: Lynne Rienner, 2002).

and racist nature of apartheid's violence.⁶¹ In this vein, Mamdani has called attention to how the TRC "reduced apartheid from a relationship between the state and entire communities to one between the state and individuals,"⁶² and Leebaw has highlighted how the TRC "was able to focus on political violence committed by parties on both sides of the struggle because its mandate was designed to investigate crimes committed *in excess* of apartheid, rather than the violence of apartheid."⁶³

Unlike Mamdani's and Leebaw's principled criticism of transitional justice's framing of the problem at stake, the social scientists and peacebuilding practitioners who began to engage with transitional justice from the early 2000s onwards brought a more pragmatic kind of change to the field's formulations of violence as problematic.⁶⁴ For them, human rights violations and international crimes were not only legal problems, and moreover not the only problems that transitional justice could address. Mendeloff, for example, argued that transitional justice's

"'truth-telling' speaks to three distinct, yet overlapping issues: (a) the causes and prevention of war, (b) human rights violations during peacetime, and (c) the commission of crimes during wartime. The present essay is concerned with the first issue. The others are important and may have some implications for war prevention, but they are ultimately distinct. Thus, truth-telling may play a role in preventing human rights violations during peacetime or preventing the commission of crimes during wartime, but these concerns are analytically distinct from its role in preventing war."⁶⁵

From Mendeloff's social scientific perspective on transitional justice, legal framings were hence not the only ones through which the problems that transitional justice was to address could be conceived. What is more, the human rights violations and international crimes highlighted by such framings did not constitute the main problem

⁶¹ Cf. Moon, "Healing Past Violence," 82.

⁶² Mamdani, "Amnesty or Impunity?," 33f.

⁶³ Leebaw, "Irreconcilable Goals," 109, emphasis in original.

⁶⁴ Cf. Sabaratnam, "Intellectual History of International Conflict Management."

⁶⁵ Mendeloff, "Truth-Seeking, Truth-Telling," 357.

at stake in transitional justice's quest for "truth" and "reconciliation." Instead, the key issue was the prevention of war.⁶⁶

At the intersection of the three developments sketched in the preceding paragraphs, war today constitutes one of the problems that transitional justice is meant to deal with. As the ambit of transitional justice has broadened to include many different kinds of large-scale, state-sponsored violences, war has become a problem which falls into the remit of transitional justice. Moreover, as truth-seeking has assumed a status of a panacea in response to all of these violences, it is assumed that transitional justice can help to address the problem of war by producing knowledge about it. To this end, transitional justice has at its disposal a number of different frames and formulations for deeming war problematic, including in particular legal and social scientific frames. In this way, transitional justice is but one contemporary example of how our ways of knowing help to (re-)produce how war constitutes a problem of international politics.

At the same time, however, the notion that within transitional justice there are available different formulations for rendering war and other violences problematic is informed by my research of other, historical examples as well as by my reconceptualization of genealogy as problematization (points which will be discussed in later chapters). In this way, this notion is thus also an example of what it might for mean to look at one's genealogical starting point anew.

Towards a genealogy of war as a problem of international politics

As transitional justice has become an increasingly ordinary – i.e. normalized and standardized – approach within international post-atrocity politics, it has been suggested that there was "a growing unease" among practitioners and scholars over the nature of the field. In Christine Bell's formulation, is transitional justice

⁶⁶ Much in this vein, this literature has also begun to reverse transitional justice's traditional subsumption of transitions to peace under transitions to democracy – and to understand the aftermath of authoritarian state violence as a "post-conflict" situation (Nauenberg, "Spreading the Truth," 654).

“‘good’ (an extension of human rights discourse, or necessary to democratization or peace), ‘bad’ (imperialist, hegemonic, impunity serving or promoting a dangerous legal exceptionalism), or a value-neutral tool with which both ‘good’ and ‘bad’ goals can be pursued”?⁶⁷

As Bell’s question indicates, the most common kind of criticism of transitional justice is one that aims at definitive evaluation and judgment. With regard to the field’s assumptions about “truth” and its instrumentality for the prevention of war and violence, the two most often-raised concerns are that transitional justice’s underlying assumptions too regularly go unquestioned and that transitional justice’s impact is adjudicated on the basis of rather too scant empirical evidence.⁶⁸

In light of these desiderata, self-acclaimed critical transitional justice scholarship mostly conceives of “truth” as an empirical and/or theoretical problem. With the aim of better specifying the causal relationship in which “truth” stands to the non-recurrence of war and other violences, empirical research into transitional justice disaggregates “truth” and its presumed effects to then engage in “scientific” (i.e. “systematic”) data collection and analysis.⁶⁹ Meanwhile, theoretical research on transitional justice draws on legal and political philosophy to more exactly specify definitions of “truth” and its various effects.⁷⁰ Overall, by taking a problem-solving

⁶⁷ Bell, “Transitional Justice and the State of the ‘Field,’” 6.

⁶⁸ Cf. Daly, “Truth Skepticism,” 38; Lisa Laplante, Kimberly Theidon, “Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru,” *Human Rights Quarterly* 29, no. 1 (2007), 228-250, at 229; Mendeloff, “Truth-Seeking, Truth-Telling,” 356f.; Nauenberg, “Spreading the Truth,” 655, 659.

⁶⁹ Phuong Pham, Patrick Vinck, “Empirical Research and the Development and Assessment of Transitional Justice Mechanisms,” *International Journal of Transitional Justice* 1, no. 2 (2007), 231–248, at 232, fn. 6; cf. Vinjamuri, Snyder, “Advocacy and Scholarship,” 346. For examples, cf. Kirsten Ainley, Rebekka Friedman, Chris Mahony, “Transitional Justice in Sierra Leone: Theory, History and Evaluation,” in: Kirsten Ainley, Rebekka Friedman, Chris Mahony (eds.), *Evaluating Transitional Justice: Accountability and Peacebuilding in Post-Conflict Sierra Leone* (Basingstoke, UK: Palgrave Macmillan, 2015), 1-18; Brahm, “Uncovering the Truth”; Chapman, Ball, “Truth of Truth Commissions”; Hugo van der Merwe, Victoria Baxter, Audrey Chapman (eds.), *Assessing the Impact of Transitional Justice: Challenges for Empirical Research* (Washington, DC: United States Institute of Peace, 2009).

⁷⁰ E.g. Leebaw, “Irreconcilable Goals”; Colleen Murphy, *A Moral Theory of Political Reconciliation* (Cambridge, UK: Cambridge University Press, 2010); Andrew Schaap, *Political Reconciliation* (New York, NY: Routledge, 2005). Of course, some scholars also take an approach that combines empirical and theoretical research (e.g. Daly, “Truth Skepticism”; Mendeloff, “Truth-Seeking, Truth-Telling”).

approach, these empirical and theoretical variants of critical transitional research seek to judge and improve transitional justice and its take on “truth” on the basis of empirical evidence and logical rigour.

In an important sense, however, the critical scholarship just sketched out undertakes no more than a limited critique of transitional justice and its assumptions about “truth” and the prevention of war. As Zinaida Miller points out, “rather than offering a critical exploration,” this kind of self-purported critical transitional justice research contents itself with discussing “the possible ‘toolbox’ or the ‘lessons learned.’”⁷¹ Within such a toolbox-approach, “truth” is either a theoretical problem of reaching – or rather, failing to reach – an abstract ideal, or else it is a practical difficulty that can be addressed and improved upon by means of evidence-based tweaking of truth-seeking processes. Striving to provide a determinative analysis of “truth” and its instrumentality for hindering war, such critical inquiries of transitional justice remain firmly within what Anne Orford calls “the register of truth and falsity”⁷²: uninterested in the political life of their analytical terms and categories, they do not ask what “truth,” as a category of transitional justice research and practice, “makes possible, brings into being, or does in the world.”⁷³

What, then, could a “critical exploration” of transitional justice that sought to go beyond this limited critique actually consist in? One possibility would be to search for invisibilities surrounding the beacon of “truth,” such as structures of economic and/or gendered inequalities, and to point out these invisibilities’ political effects.⁷⁴ Another possibility would be to analyze truth-seeking as performative and thereby as productive of a “reconciliation” of individuals and nations that is necessarily

⁷¹ Zinaida Miller, “Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice,” *International Journal of Transitional Justice* 2, no. 3 (2008), 266–291, at 290.

⁷² Anne Orford, “Commissioning the Truth,” *Columbia Journal of Gender and Law* 15, no. 3 (2006), 851–883, at 859.

⁷³ *Ibid.*, 855.

⁷⁴ Cf. Kirsten Campbell, “The Gender of Transitional Justice: Law, Sexual Violence, and the International Criminal Tribunal for the Former Yugoslavia,” *International Journal of Transitional Justice* 1, no. 3 (2007), 411–432; Miller, “Effects of Invisibility”; Fionnuala Ní Aoláin, “Political Violence and Gender during Times of Transition,” *Columbia Journal of Gender and Law* 15, no. 3 (2006), 829–849.

understood in the exclusionary terms of liberalism and its ideals of statehood and modern temporality.⁷⁵ While analyses developed along these lines have shed many valuable insights into the curiously “self-evident virtue”⁷⁶ of truth-seeking, in this thesis I pursue a different route. Taking my cue from the foregoing discussion of “war” and its violences as variously formulated problems as well as of “truth” as a means for addressing these problems, I argue that another possibility for a critical inquiry into the political life of our analytical terms and categories is to proceed by seeking insight into these categories’ histories.

More specifically, and using as my starting point the example provided by transitional justice⁷⁷, the critique I aspire to in this thesis consists in a genealogy of how war became an object of knowledge and action and, as such, a problem of international politics. This means that this thesis is not a critique of transitional justice – not because transitional justice would not constitute a worthwhile topic, but rather because, as I hope the foregoing discussion has made clear, once I started to work on the history of some of what we see in transitional justice today, the subject matter of this history began to shift and change. Starting with an interest in transitional justice’s assumption that knowing the “truth” about past violence is crucial to the prevention of future violence, the genealogy I developed ended up focusing on war as an epistemic *and therefore* an actionable object. In a sense, then, the genealogy proposed by this thesis still attends to the knowledge-action-nexus which transitional justice exemplifies – to

⁷⁵ Cf. Orford, “Commissioning the Truth”; Berber Bevernage, “Writing the Past Out of the Present: History and the Politics of Time in Transitional Justice,” *History Workshop Journal* 69, no. 1 (2010), 111-131.

⁷⁶ Bevernage, “Writing the Past Out of the Present,” 111.

⁷⁷ Here, it could be argued that whereas transitional justice mostly deals with internal armed conflicts, my focus in the chapters to follow is on international war. However, as I have tried to show in this part of the chapter, transitional justice mechanisms – in particular criminal trials – are increasingly applied in the aftermath of international wars. Moreover, with the recent activation of the ICC’s jurisdiction over the crime of aggression, the problem of international war is potentially moving further to the centre of transitional justice’s attention. Finally, while the logics of these two kinds of war differ in many respects, the logics according to which knowledge is used to address these two kinds of war as problematic are not all that dissimilar – as evidenced not least by the fact that scholars of transitional justice often invoke initiatives for dealing with international wars, such as the International Military Tribunals in Nuremberg and Tokyo, as part of the “genealogy” of transitional justice (cf. Teitel, “Transitional Justice Genealogy”) – a point to which I will return in Chapter 5.

the idea that knowledge of past war is necessary for prevention of future war, and to the practices attendant to this idea – but it goes beyond transitional justice in order to investigate this nexus.

While a more detailed argument for genealogy as a particular kind of critique will have to wait until Chapter 2 of the thesis, what bears explication here is in how far a genealogical critique proceeds in a register different from that of truth or falsity, good or bad. The critical aim of a genealogy of the problem of war is not to issue a definitive account and judgment of our ways of dealing with war (such as, for instance, transitional justice), and most certainly it is not to suggest that we ought to stop seeking knowledge about and taking action against war. Rather, genealogy aims to render visible, reflect upon, and enable further work on the preconditions and the constitutive exclusions of our ways of problematizing war. To illustrate what is meant by this, think of the criticism that the South African TRC incurred for framing the violence it sought to address in a way that obfuscated the structural – historical, political, and social – nature of this violence: what was excluded from the formulation of the problem chosen by the TRC helped to define that which was included, namely violence as perpetrated by and carried out against individuals. Not unlike these criticisms of the TRC, the genealogy developed in this thesis hopes to recognize some of the constitutive exclusions of the problem of war in international politics.

To set myself a final task to be taken on in the chapters to follow, I want to argue that genealogy constitutes a very suitable way for getting to work on the preconditions and constitutive exclusions of our ways of knowing about and acting against war. My genealogical interest in the problem of war and our ways of addressing it is similar to the targets pursued by some of the kinds of critique mentioned earlier, critiques which sought to demonstrate the invisibilities surrounding transitional justice and the productive effects of its language. Ultimately, however, the genealogy I propose pursues these issues in a different way: it focuses on the historical coming about of our ways of knowing war, on the practices which constitute these ways, and on the co-productive relationship between these ways and practices and our formulations of the

problem of war. Through this focus, genealogy constitutes a prime way of getting to work on the first of the two problems this thesis deals with, the problem of war in international politics.

At the same time, however, genealogy also constitutes the second problem that this thesis sets out to work on. How it does so is the subject of the second part of this chapter.

Methods as ready-mades: the example of genealogy

Since the late 1980s, genealogical analyses in IR have inquired into many of the research objects with which the discipline most centrally concerns itself. IR genealogists have scrutinized matters such as diplomacy⁷⁸, sovereignty⁷⁹, and various international norms relating to warfare and the use of force in international politics (e.g. the taboo against the use of chemical weapons in war⁸⁰ and the distinctions between the combatant and the civilian⁸¹ and between the regular combatant and the irregular fighter⁸²). Tracing histories where none had been assumed to exist, this kind of genealogical research in IR has successfully put into question international practices, institutions, and principles which had previously been all but taken for granted. Not least owing to these analytical achievements, genealogy is today often presented as a standard instrument for the interpretive and/or critical study of

⁷⁸ Der Derian, *On Diplomacy*.

⁷⁹ Bartelson, *Genealogy of Sovereignty*; Cynthia Weber, *Simulating Sovereignty: Intervention, the State and Symbolic Exchange* (Cambridge, UK: Cambridge University Press, 1995).

⁸⁰ Richard Price, *Chemical Weapons Taboo* (Ithaca, NY: Cornell University Press, 1997).

⁸¹ Helen Kinsella, *The Image Before the Weapon: A Critical History of the Distinction Between the Combatant and the Civilian* (Ithaca, NY: Cornell University Press, 2011).

⁸² Sibylle Scheipers, *Unlawful Combatants: A Genealogy of the Irregular Fighter* (Oxford, UK: Oxford University Press, 2015).

international politics – it is acclaimed as a “research tool,”⁸³ a “heuristic guide,”⁸⁴ or, most straightforwardly, as a “method.”⁸⁵

Originally, it was this idea of genealogy as a method for inquiring into the history of that which we take for granted which intrigued me. As I was interested in transitional justice’s curious assumption that knowing the “truth” about past violence is imperative for the prevention of future violence, my initial plan was to use genealogy as a method to study the history this assumption. Yet as I set out to put this plan into action, not only did my interest in transitional justice begin to reconfigure, but I soon also became preoccupied with what it actually meant to *do* a genealogy.

Published during the late 1980s to mid-1990s, early genealogical analyses in IR had on the whole been reluctant to embrace genealogy as a method. Some of them were even outrightly hostile to what they perceived to be an excessive and undue “methodologism”⁸⁶ – an expectation that proper research ought to specify its analytical procedures prior to applying them in practice.⁸⁷ By contrast, more recent formulations of genealogy as a research instrument seemed to proceed in exactly the manner which early genealogists opposed: they carefully defined their main analytical steps prior to actually carrying out the analysis. This, they argued, was necessary to make genealogy usable for a critical inquiry into our problematizations, our disciplines, and ourselves as knowledgeable subjects.⁸⁸ As I worked my way first backward from recent to early proposals for genealogical research in IR and then forward through the genealogy that

⁸³ Srdjan Vucetic, “Genealogy as a Research Tool in International Relations,” *Review of International Studies* 37, no. 3 (2011), 1295-1312, at 1296.

⁸⁴ Scott Hamilton, “A Genealogy of Metatheory in IR: How ‘Ontology’ Emerged from the Inter-Paradigm Debate,” *International Theory* 9, no. 1 (2016), 136-170, at 144.

⁸⁵ Philippe Bonditti, Andrew Neal, Sven Opitz, Chris Zebrowski, “Genealogy,” in Claudia Aradau, Jef Huysmans, Andrew Neal, Nadine Voelkner (eds.), *Critical Security Methods: New Frameworks for Analysis* (London, UK: Routledge, 2015), 159-188, e.g. at 160; Stefan Borg, “Genealogy as Critique in International Relations: Beyond the Hermeneutics of Baseless Suspicion,” *Journal of International Political Theory* 14, no. 1, 41-59, at 43.

⁸⁶ James Der Derian, “The Boundaries of Knowledge,” 7.

⁸⁷ On methodologism, cf. Charles Guignon, “Williams and the Phenomenological Tradition,” in Daniel Callcut (ed.), *Reading Bernard Williams* (Abingdon, UK: Routledge, 2003), 166-188, at 169.

⁸⁸ Cf. e.g. Bonditti et al., “Genealogy,” 178; Hamilton, “A Genealogy of Metatheory,” 161f.

I was to add to this literature, I increasingly strayed from the idea of genealogy as method – so much so, in fact, that I am now finding myself opposed to it.

Therefore, my aim in this second part of the chapter is again twofold. On the one hand, to establish a second starting point for the genealogical analysis to come, I want to explain what exactly I find problematic about the understanding and practice of genealogy as a method: namely, that insofar as method implies that we fix our procedures prior to having achieved the critical insights that we aim to produce, it also entails that these procedures cannot themselves be the subject of these insights. On the other hand, I want to account for how I came to this second starting point. Since my initial understanding of and practical prappling with genealogy were informed not least by some of the many genealogical studies which have been undertaken in IR, in this part of the chapter I therefore want to offer my reading of this particular literature.

To achieve this dual purpose, I first survey a number of recent proposals on genealogy in IR as to their understanding of genealogy and of method.⁸⁹ Here, I find that these proposals, by undertaking a two-step procedure in which genealogy is first specified and then applied, often tend to hold constant the practice of genealogy. Next, I ask the same questions of two examples of early genealogical works in IR, James Der Derian's *On Diplomacy*⁹⁰ and Jens Bartelson's *A Genealogy of Sovereignty*.⁹¹ Teasing out the different ways in which these authors introduce a practically reflexive moment into their genealogies, I argue that this kind of moment is what current proposals for genealogy as method are lacking. In concluding, I elaborate why genealogy as method constitutes a problem for this thesis in particular and how genealogy as reflexive

⁸⁹ There are myriad genealogical studies in IR today (for a few examples from different subfields of IR, cf. Claudia Aradau, Rens van Munster, *Politics of Catastrophe: Genealogies of the Unknown* (London, UK: Routledge, 2011); Kinsella, *The Image Before the Weapon*; Oliver P. Richmond, *Peace in International Relations* (Abingdon, UK: Routledge, 2008)). Usually, such studies include a brief discussion of “the genealogical method” – or of “what it means to do genealogy” – in the introductory chapter. For purely practical reasons, my analysis in this chapter does not aim to provide an overview of genealogical works in IR, but draws on a more select number of recent IR publications that have made “the genealogical method” a main point of their argument.

⁹⁰ Der Derian, *On Diplomacy*.

⁹¹ Bartelson, *Genealogy of Sovereignty*.

praxis can develop a farther-reaching critique of our problematizations, our disciplines, and ourselves.

Genealogy in contemporary IR: methodologism and the limits of critique

Today, genealogy is often construed as a method for IR. On the face of it, this construal might seem a rhetorical move. On the one hand, laying claim to “method” can wield considerable persuasive power in IR. Thus, Neumann labels genealogy a “method” to discipline poststructuralists⁹², and Bonditti and colleagues do so in order to subvert security as the foundational problem of critical security studies.⁹³ On the other hand, in many of IR’s critical quarters “method” is considered a tainted term⁹⁴, and hence to refrain from calling genealogy a “method” is a rhetorical act just as well. In this vein, to make genealogy seem more appealing to a wider audience without, however, alienating genealogy’s staunchly critical adherents, Hamilton speaks of genealogy as a “heuristic guide,” a “recipe” or a “toolkit,”⁹⁵ and Vucetic refers to it as a “research tool” or also a “research strategy.”⁹⁶ In sum, one reading of IR’s current understanding of genealogy as a method is to see these acts of labeling as attempts at persuading disciplinary audiences to take seriously genealogical analyses.

My main concern in this part of the chapter, however, is less with the rhetoric than with the understanding and practice of genealogy as method, irrespective of whether or not one calls it thus. My contention is that genealogy as method consists, *inter alia*, in a particular practice: namely, the practice of specifying what genealogy is, and how one does it, to the effect of fabricating it as a tool to subsequently be applied in an analysis of international politics. This practice of genealogy as method is discernible, for instance, in the “methodological discussions of genealogy” which, according to

⁹² Neumann, “Poststructuralists also have a Duty.”

⁹³ Bonditti et al., “Genealogy,” 176ff.

⁹⁴ As noted by Aradau, Huysmans, “Critical methods in IR,” 601.

⁹⁵ Hamilton, “A Genealogy of Metatheory,” e.g. 144.

⁹⁶ Vucetic, “Genealogy as a Research Tool.”

Vucetic, have since the mid-2000s become “*de rigueur*” in IR.⁹⁷ These discussions have been conducted through dedicated chapters or articles⁹⁸ which usually have in common at least three elements: a definition of their particular aim in promoting genealogy in relation to one or another of IR’s major fault-lines; a reference to genealogy’s “different” nature; and a specification of the analytical steps and procedures that genealogy ought to consist in. Proceeding in this way, these methodological discussions of genealogy in some sense end up evacuating the contemplation and construction of genealogy’s analytical procedures from the actual analysis. In turn, this has the effect of limiting genealogy’s critical capacity: for it renders void genealogy’s ability to achieve practically reflexive insights into the entanglement of knowledge and power, or into how our genealogical practices and ways of knowing are productive of and in turn produced by our problematizations, our disciplines, and ourselves as knowledgeable subjects.

To start with, how do contemporary proposals for practicing genealogy as a method define their aims? As a first example, consider Scott Hamilton’s plea for “the use of genealogical methodologies” for sounding out and transcending IR’s disciplinary limits.⁹⁹ In particular, Hamilton employs genealogy to disengage from and go beyond the practice of conceiving one’s research in terms of one or another static ontology.¹⁰⁰ A second example is provided by Vucetic’s article, whose “purpose [...] is to bring attention and discussion to genealogy as a research tool in IR.”¹⁰¹ In doing so, Vucetic’s wider aim is to put into perspective the difference between positivist and post-positivist analyses, between a concern with causal as opposed to constitutive relations, or between – as formulated for IR by Hollis and Smith – explanation and

⁹⁷ *Ibid.*, 1305, italics in original.

⁹⁸ Vucetic notes approvingly that, for instance, Hansen’s *Security as Practice* “commits an entire chapter, and then some, on methodological trade-offs in genealogical scholarship” (*ibid.*).

⁹⁹ Hamilton, “A Genealogy of Metatheory,” 140

¹⁰⁰ More specifically still, his is a genealogy of “an innocuous everyday practice that IR scholars now engage in when (meta)theorizing: using the philosophy of science to theorize and conceptualize the ‘real world’ or ‘worlds’ in their IR theory or theories” (*ibid.*, 138).

¹⁰¹ Vucetic, “Genealogy as a Research Tool,” 1296.

understanding.¹⁰² Finally, the aim of a chapter by Philippe Bonditti and colleagues is to show “the value of genealogy as a critical method to study security.”¹⁰³ Thereby, they inter alia hope to interrupt and render criticizable how “security” as a research object contributes to the constitution of authority and power within the discipline of (critical) security studies.

Next, contemporary IR proposals for practicing genealogy as a method usually also contain an appreciation of genealogy as a “different” kind of history, and without fail include a reference to some of Nietzsche’s and Foucault’s famous pronouncements on the matter. Hamilton, for instance, repeatedly stresses that “a genealogy works differently”¹⁰⁴: that it is a distinct and radical kind of historical analysis whose purpose it is to open to question all that we previously took for granted, making “no universals allowed” the cardinal rule of genealogical thinking.¹⁰⁵ Vucetic likewise points to the well-rehearsed argument that genealogies show “that there were no universal truths in history.”¹⁰⁶ Bonditti and colleagues, finally, juxtapose genealogy and “(mere) history” to argue that “genealogy does not aspire to representation but to a problematization of historical representation.”¹⁰⁷

Embedded within their appraisals of genealogy as a different kind of history, all three texts also develop an argument about genealogy as an analysis of knowledge. Hamilton, for instance, specifically emphasizes genealogy’s ability to show “how forms of knowledge [...] that are considered to be universal or obvious are actually temporal and historical”¹⁰⁸ and to thereby enable us “to think and do otherwise.”¹⁰⁹ Meanwhile, Vucetic holds that “genealogy is a distinctive historical, interpretative research tool suited for the making of epistemologically varied truth-claims”¹¹⁰ –

¹⁰² Cf. *ibid.*, 1296, 1304ff. See also Hollis, Smith, *Explaining and Understanding*.

¹⁰³ Bonditti et al., “Genealogy,” 159.

¹⁰⁴ Hamilton, “A Genealogy of Metatheory,” e.g. 138, 142.

¹⁰⁵ *Ibid.*, 144.

¹⁰⁶ Vucetic, “Genealogy as a research tool,” 1295.

¹⁰⁷ Bonditti et al., “Genealogy,” 162ff.

¹⁰⁸ Hamilton, “A Genealogy of Metatheory,” 143.

¹⁰⁹ *Ibid.*

¹¹⁰ Vucetic, “Genealogy as a research tool,” 1295f.

including both relatively standard kinds of claims about causality and unique claims about the causal interrelationship of power and knowledge and about “political histories of truth.”¹¹¹ Lastly, for Bonditti and colleagues, genealogy as history “exposes the power relations and stakes involved in constituting ‘security’ as an object of knowledge to be studied by authoritative, knowledgeable subjects,” thereby aiming to “open up the field of action in the present.”¹¹²

Having affirmed their disciplinary purposes and appraised genealogy as a distinctive kind of history of, amongst other things, power and knowledge, methodological discussions of genealogy within IR then proceed to specify the analytical moves that genealogy ought to undertake. These blueprints of genealogy as an enumeration of steps include different concepts to be used and/or different procedures for gathering and analyzing data. Since my contention is that this methodologism – the practice of comprehensively defining genealogy’s various measures prior to the empirical analysis – risks limiting genealogy’s potential for reflexive insight into and critique of its own entanglement within varied histories of knowledge, how different authors develop and implement genealogy as a tool or toolbox merits a closer look.

While Hamilton emphasizes the historicity of forms of knowledge, the particular form of knowledge that is genealogy appears to be exempt from this onslaught on universalisms. Hamilton suggests for genealogy to have an “essence”¹¹³ and insists that there are “four crucial stages or steps” which “any genealogical analysis” must undertake, namely “problematization, practice, rationality, and emergence” (which he then elaborates at some length).¹¹⁴ He immediately qualifies the intention behind this definition of genealogy, clarifying that “this article is not a declaration of what every genealogy was, is, should, or can be, but is a recipe or toolkit that scholars may draw upon in the future when conducting their own [genealogies].”¹¹⁵ Nonetheless, his

¹¹¹ Cf. *ibid.*, 1312.

¹¹² Bonditti et al., “Genealogy,” 162ff.

¹¹³ Hamilton, “A Genealogy of Metatheory,” 143.

¹¹⁴ *Ibid.*, 140. Hamilton also argues for these four steps to be “essential” (*ibid.*, 144).

¹¹⁵ *Ibid.*, 144.

aspiration is to delineate a number of concepts so as to make them into ready-made analytical tools for other genealogists to pick up and employ on their empirics. And this is how Hamilton proceeded, too: “After outlining four crucial steps in every genealogical analysis, [the article] applied these to IR’s philosophy of science debate by conducting a genealogy of metatheory in IR.”¹¹⁶ In this fashion, the “genealogical eye” – the analytical instrumentarium with which Hamilton seeks to look afresh at that which seems timeless and universal – is itself fixed prior to and held static throughout the analysis.

For Vucetic, genealogy is, ideally and unapologetically, a method. More specifically, it is one of Foucault’s methods for researching discourses to show how they constitute subjects, how they produce what is thinkable, and how their multiplicity begets power and resistance, contestation and change.¹¹⁷ Vucetic concedes that it is possible to understand genealogy, as any other research tool, to be a “social item.”¹¹⁸ However, he gives rather short shrift to this view: since Foucault based his claims about the impossibility of truth as a universal on systematic empirical research and not on “some unfettered, subjective opinion,” Vucetic argues, it follows that one can sensibly construe and practice genealogy as a method.¹¹⁹ As a method, Vucetic then defines genealogy by “the well-known ‘three E’” – Bartelson’s episodes, examples, and effectiveness cited in the introduction of this chapter.¹²⁰ These serve as criteria for the selection of data to be included in the analysis, and also as “a discourse analysis of historical documents” which allows the genealogist to draw comparisons within and across the selected examples and episodes.¹²¹ On the whole, Vucetic maintains that “[t]he mechanics of writing genealogy are similar to an interpretative study based on historical case studies.”¹²² His understanding of and argument for genealogy are thus

¹¹⁶ *Ibid.*, 161, cf. 147.

¹¹⁷ Cf. Vucetic, “Genealogy as a research tool,” 1299f.

¹¹⁸ *Ibid.*, 1298.

¹¹⁹ *Ibid.*, 1298f.

¹²⁰ *Ibid.*, 1300. Cf. Bartelson, *Genealogy of Sovereignty*, 73

¹²¹ Vucetic, “Genealogy as a research tool.”

¹²² *Ibid.*, 1301.

not unlike Hamilton's: he defines what doing genealogy consists in prior to carrying out the analysis, thus holding constant genealogy's conduct itself.

For Bonditti and colleagues, "[t]he method [of genealogy] is to question the complex mechanisms in which a 'particular truth' becomes 'the truth.'"¹²³ To denote the two main "elements of a genealogy" by which to analytically implement this questioning, they propose two concepts, problematization and *dispositif*.¹²⁴ Utilizing these two concepts, Bonditti et al. presume for genealogy to consist of four analytical steps: first, the identification of a contemporarily and/or historically contentious object; next, the determination of key moments of this phenomenon's emergence as a solution to a problem; then, the analysis of the power struggles that took place surrounding these key moments of emergence; and finally, the evaluation of how the contentious object sits within a wider *dispositif*. The authors also explicate their methods for gathering and analyzing data and their selection criteria in deciding on sources.¹²⁵ Though Bonditti and colleagues are driven by a more explicitly critical inclination than both Hamilton and Vucetic, they thus also engage in the self-same practice of specifying genealogy as a method prior to engaging in the empirical analysis.¹²⁶

Taken together, the texts by Hamilton, Vucetic, and Bonditti and colleagues exemplify what I refer to as the practice of genealogy as method: the two-step move in which a comprehensive definition of what doing genealogy consists in is provided prior to the actual doing of it. My contention is that this practice of genealogy as a method deprives genealogy of some of its reflexive and practical potential for critique. As the authors reviewed in this section also maintain, genealogical critique works by showing our ways of knowing to be historical and hence malleable: it is in this way that genealogy

¹²³ Bonditti et al., "Genealogy," 167.

¹²⁴ *Ibid.*, 169.

¹²⁵ *Ibid.*, 181f. Whereas Bonditti and colleagues report that in their own genealogical work, their main guide for selecting sources was "our own sense of their importance" (*ibid.*), Vucetic maintains that genealogy might use "more-or-less standard social science casing techniques" (Vucetic, "Genealogy as research tool," 1301).

¹²⁶ For yet another argument in favor of genealogy as method in this vein, cf. Neumann, "Post-Structuralists also have a Duty," 14.

enables us “to think and do otherwise.” However, conceiving and practicing genealogy as a method means, for many IR genealogists, to specify and hone their analytical tools before employing them on their empirical materials. In this way, recent methodological discussions of genealogy in IR run the risk of evacuating the practice of genealogy from the historicization of knowledge and power that it effects. In this way, the practice of genealogy as a method can end up restricting genealogy’s reflexively critical capacity.¹²⁷

This is not to say that the authors just reviewed did not consider questions of reflexivity – but rather that the practice of genealogy as method limits their capacity for taking action on such questions. For Hamilton, for instance, genealogy is a “de-naturalization [...] of ourselves in the present moment” which “asks how we are continuously constituted as historical subjects, and thus how we may think otherwise.”¹²⁸ In the end, however, this reflexive “ethos”¹²⁹ of genealogy turns out to be a passively contemplative rather than an actively political one, as in Hamilton’s view, genealogy helps us “to understand how we have come to think the way we do in the present moment, and to accept with humility that this moment will change. Just as thought is always ongoing and in process, and thus changes, so does its history.”¹³⁰ For Vucetic, because genealogy as a method can be neatly distinguished from genealogy as a political intervention, it is ultimately not necessary to consider it reflexively. Though genealogy’s task is “to suggest, directly or indirectly, alternative ways to constitute the aspect of humanity under study,”¹³¹ this task apparently does not extend to genealogy as a way of knowing, and rather than being (potentially) embodied within genealogical practice, “our political and ethical commitments [...]

¹²⁷ One might object that the descriptions of genealogy just cited only purport to have practiced it as method when actually, their authors produced their understanding of what it means to conduct a genealogy throughout research processes that were far messier than they let on. Yet while this seems likely, I would suggest that it does not detract from my argument, which is about the effect that the practice of genealogy as method has on genealogy’s critical capacities.

¹²⁸ Hamilton, “A Genealogy of Metatheory,” 138.

¹²⁹ *Ibid.*, 143, 162. On the problems of the genealogical ethos, cf. Borg, “Genealogy as Critique in IR.”

¹³⁰ Hamilton, “A Genealogy of Metatheory,” 162.

¹³¹ Vucetic, “Genealogy as a research tool,” 1302.

follow our analysis.”¹³² The most overtly practically reflexive understanding of genealogy is proposed by Bonditti and colleagues. Since genealogy “is always immanent to struggles and self-consciously political”¹³³ and since it seeks “to intervene in history from within history,”¹³⁴ the authors contend that it would be a “fallacy” to assume “that supposedly knowledgeable subjects (in this case, us) exist fully formed prior to encountering their object of analysis.”¹³⁵ Therefore, they argue, genealogy ought to focus on the analyst’s inevitable entanglement in the relationship between power and knowledge.¹³⁶ However, their reflexive concern does not seem to extend to genealogy as method: they do not seem to consider, that is, how genealogy as the practice of research is a productive part of the entanglement of objects, subjects, disciplines and problematizations that they seek to critically point out and work on.

This is what, in the chapters to follow, I aim to do differently: unlike those who render genealogy a method, I seek to reflect on how the practice of genealogical analysis is intertwined with that which it analyzes, to expose this practice to the critical insights that it produces, and to actively try and alter this practice and its entanglement with our problematizations, our disciplines, and ourselves. To this end, in seeking to understand and practice genealogy as historical, in flux, and continuously in the making, I draw much inspiration from the first generation of IR genealogists who, in fact, built various practically reflexive dimensions into their analyses. How they did so – and what is to be learned from this today – is the subject of the next section of this part of the chapter.

Conceptual and practical reflexivity in early IR genealogies

Raised by contemporary proponents and critics of genealogy alike, a standard complaint about the first generation of genealogists in IR holds that their analyses were

¹³² *Ibid.*, 1312.

¹³³ Bonditti et al., “Genealogy,” 165.

¹³⁴ *Ibid.*, 167.

¹³⁵ *Ibid.*, 159.

¹³⁶ Cf. *ibid.*, 166.

deficient in terms of method. Neumann, for instance, admonishes “a certain lack of acknowledgement of the principle that poststructuralists have the same duty to care about the specifications of methodology as do all other scholars,”¹³⁷ and Vucetic bemoans how “the authors of IR genealogies themselves,” in what he considers to be an “anti-methodological” posturing, had a “tendency [...] to provide no more than a couple of paragraphs on their research tool of choice.”¹³⁸ Agreeing with these criticisms, Hamilton attributes the alleged shortcomings to the example set by Foucault, whose “inconsistent use of the term [method] makes a genealogical method difficult to pin down.”¹³⁹ And while Bonditti and colleagues take a slightly more generous view of their genealogical predecessors, crediting them with having “opened the study of international relations to new ways of working and thinking,” they also find that early IR genealogies “downplayed questions of method.”¹⁴⁰

Here, I want to suggest a different reading of early genealogical works in IR, one which looks for lessons to be learned rather than for deficiencies to be deplored.¹⁴¹ To this end, I focus on how two of these works – Der Derian’s *On Diplomacy* and Bartelson’s *Genealogy of Sovereignty* – constituted reactions to what they took to be one of the most pressing disciplinary problems of their time¹⁴², namely positivism’s inability to account for the political nature of knowledge, and how in response to this problem they conceived of and implemented genealogy as an in practice reflexive analysis which historicized and processualized not only its objects, but also itself. To be sure, not all of the first generation of genealogies in IR included such a practically reflexive aspect. Richard Price’s genealogy of the chemical weapons taboo, for instance, is a “meditation” on technology, science and morality¹⁴³, but does not include an explicit, let alone a practical feedback loop between its insights and its own conduct. Hence,

¹³⁷ Neumann, “Post-Structuralists also have a Duty,” 17.

¹³⁸ Vucetic, “Genealogy as a research tool,” 1296.

¹³⁹ Hamilton, “A Genealogy of Metatheory,” 144.

¹⁴⁰ Bonditti et al., “Genealogy,” 160f.

¹⁴¹ This reading of early genealogical works in IR then informed my reading of Foucault and his interlocutors – which is the subject matter of the following chapter.

¹⁴² Cf. Bonditti et al., “Genealogy,” 161.

¹⁴³ Price, *Chemical Weapons Taboo*, ix.

my review of Der Derian and Bartelson does not intend to suggest them as representative of the first decade of genealogy in IR. Rather, they constitute examples of the reflexive and practical critical potential that genealogy holds for research into knowledge and (international) politics, and it is in this sense that I will build on them in the chapters to come.

For Der Derian, genealogy is an alternative to positivism insofar as it makes for a different kind of theory, or rather, a different way of doing theory. Using genealogy in tandem with dialectics, Der Derian seeks to conduct a “*theoretical enquiry*” into diplomacy’s forgotten past, problematic present, and (im-)possible future.¹⁴⁴ In *On Diplomacy*, genealogy’s historical approach to knowledge and politics thus serves theoretical ends, or as Der Derian argues, “it takes a radical defamiliarization of diplomatic (pre-)history to resurrect questions which traditional diplomatic theory has failed to ask.”¹⁴⁵ His genealogy of diplomacy forms part of his intervention into the debate between positivism and postpositivism in IR¹⁴⁶, in which Der Derian “posits heterological, multipolar grids of knowledge and practice” against “monological, totalizing theory”¹⁴⁷ to thereby provide “theoretical approaches which are new to the discipline.”¹⁴⁸ In the context of this quest for postpositivist theory, genealogy is one of a variety of analytical means – “not so much a method as an intellectual activity” – through which analysts can “disturb habitual ways of thinking and acting in international relations” in order “to provide new intelligibilities and alternative possibilities for the field.”¹⁴⁹

¹⁴⁴ Der Derian, *On Diplomacy*, 2, italics in original.

¹⁴⁵ *Ibid.*, 67, cf. 3f.

¹⁴⁶ On the debate between positivism and post-positivism in IR – confusingly labelled sometimes as the “third” and sometimes as the “fourth” debate” – see: Kurki, Wight, “International Relations and Social Science,” 20ff.

¹⁴⁷ Der Derian, “Boundaries of Knowledge,” 6.

¹⁴⁸ Der Derian, *On Diplomacy*, 199.

¹⁴⁹ Der Derian, “Boundaries of Knowledge,” 4. On the question of whether or not genealogy constituted a “method” (in whichever sense of the term), Der Derian and his closest collaborators refused to give a final answer. Cf. Der Derian, *On Diplomacy*, 67; James Der Derian, Michael J. Shapiro, “Foreword and Acknowledgements,” in James Der Derian, Michael J. Shapiro (eds.), *International/Intertextual Relations* (New York, NY: Lexington Books, 1989), xi; Donna U. Gregory,

As such an intellectual activity, genealogy is not only “an open-ended” way of doing theory rather than an approach that requires fixing one’s theory prior to the analysis.¹⁵⁰ It is also a way of doing theory which takes theory itself to be “a knowledge practice” which has been “historically and often arbitrarily separated from ‘events’, that is, the materially inspired practices comprising the international society.”¹⁵¹ To remedy this state of affairs, Der Derian makes sense of his object of analysis, diplomacy, and of his own analytical practice, genealogy, through one and the same concept: alienation, or more specifically “the Hegelian notion of alienation” which, as Der Derian explains, “deals with the *mutual* production of power and truth.”¹⁵² While diplomacy is a response to and a mediation of the alienation that arose from the estrangement of men from men [sic] and of states from states¹⁵³, genealogy seeks to respond to and mediate the alienation of theory (i.e., of theorists and their knowledge practices) from the world.¹⁵⁴ Hence, Der Derian’s purpose in conducting his genealogy is not so much “to mediate between the data and the world,” as Neumann argues to then fault Der Derian for not doing this data-mediation properly.¹⁵⁵ Rather, genealogy is to act as a broker between theory and the world, to bring theorization back into the world, and to make possible new ways of doing theory.¹⁵⁶ Against a positivist understanding of theory as knowledge *about* the world that is not itself *of* the world, Der Derian, through the concept of alienation, proposes genealogy as a reflexive kind of theory which requires theorists to think themselves and their practices within the world they are theorizing.¹⁵⁷

“Foreword,” in James Der Derian, Michael J. Shapiro (eds.), *International/Intertextual Relations* (New York, NY: Lexington Books, 1989), xiii-xxi.

¹⁵⁰ Der Derian, *On Diplomacy*, 67.

¹⁵¹ Der Derian, “Boundaries of Knowledge,” 6.

¹⁵² Der Derian, *On Diplomacy*, 126, cf. 50. On Der Derian’s concept of “alienation,” see also Neumann, “Post-Structuralists also Have a Duty.”

¹⁵³ Cf. Der Derian, *On Diplomacy*, 50, 106-110.

¹⁵⁴ Cf. *ibid.*, 10, 120.

¹⁵⁵ Neumann, “Post-Structuralists also Have a Duty,” 12.

¹⁵⁶ Cf. Der Derian, *On Diplomacy*, 208.

¹⁵⁷ In this, Der Derian’s argument about and approach to theory are exemplary of what, a year after the publication of *On Diplomacy*, Robert Keohane called a “reflective” in contradistinction to a “rationalist” approach to theory in IR (Robert Keohane, “International Institutions: Two Approaches,”

For Bartelson, genealogy is a different kind of history of ideas which allows him to take a position on the problem of positivism while positioning himself outside of the debate between positivism and postpositivism. By conducting a genealogy of sovereignty, Bartelson occupies himself not only “with the history of international political theory, which is a rather short one, but with the formation of the necessary constituents of such a discourse, and their relation to its emergence and later scientification.”¹⁵⁸ As the term scientification already indicates, Bartelson’s analysis is centrally concerned with knowledge. More precisely, his interest lies with “political knowledge” and in particular with the question of “sovereignty and its relationship to truth.”¹⁵⁹ In Bartelson’s view, both positivism and postpositivism in IR are unable to make sense of this relationship. While positivism fixes sovereignty to such an extent that it can no longer perceive the enabling role which sovereignty has played for knowledge¹⁶⁰, postpositivism, in addressing the “twin fallacies of finalism and presentism,”¹⁶¹ goes too far and thus deteriorates into an “epistemic or conceptual relativism” which cannot comprehend this role either.¹⁶² In this way, Bartelson does not situate his own analysis within IR or the social sciences more generally, but takes these disciplines as “empirical discourses”¹⁶³ or empirical contexts in which the relationship between sovereignty and knowledge can be analyzed. Instead, he situates himself in history in a dual sense of the term. For one, Bartelson conducts genealogy as a different kind of history of ideas that belongs to the genre of “histories of the present as inside stories,”¹⁶⁴ as opposed to “histories of the past as outside stories”¹⁶⁵

International Studies Quarterly 32, no. 4 (1988), 379-396). For two contemporary formulations of postpositivism as reflexive theorizing, cf. Yosef Lapid, “The third debate: On the prospects of international theory in a post-positivist era,” *International Studies Quarterly* 33, no. 3 (1989), 235-254; Mark Neufeld, “Reflexivity and International Relations Theory,” *Millennium: Journal of International Studies* 22, no. 1 (1993), 53-76.

¹⁵⁸ Bartelson, *Genealogy of Sovereignty*, 86.

¹⁵⁹ *Ibid.*, ix.

¹⁶⁰ Cf. *ibid.*, 14f.

¹⁶¹ *Ibid.*, 54.

¹⁶² *Ibid.*, 57.

¹⁶³ *Ibid.*, 12.

¹⁶⁴ *Ibid.*, 69.

¹⁶⁵ *Ibid.*, 54.

such as sociology of knowledge and contextualist or Cambridge School intellectual history.¹⁶⁶ In turn, this positioning of genealogy as an “inside story” within history as an academic discipline implies that genealogy is also situated within history more generally.¹⁶⁷

From this location of genealogy within history stems its practically reflexive dimension. As “the main thesis of the book is that sovereignty and knowledge implicate each other logically and produce each other historically”¹⁶⁸, Bartelson contends that to study this relationship between sovereignty and knowledge we need to find a way to “situate ourselves as detached spectators *within* history.”¹⁶⁹ He achieves this by taking history to consist of text, here understood as discourse or also as narrative.¹⁷⁰ If history is text, then genealogy, as a genre of the academic discipline of history and as part of history more generally, can be seen as a way of writing. Genealogy as “a study of history as narrative,” Bartelson argues, “must itself be a historical narrative, and follow a narrative course which to an extent reflects the structure of the investigated narrative.”¹⁷¹ While positivists might therefore criticize genealogy for being circular and tautological, Bartelson maintains that it is only by assuming “cyclical recurrence at the level of narrative” that genealogy “can account for the formation of its own point of view” and find a modicum of analytical distance.¹⁷² Therefore, the way in which he reasons for and constructs the reflexive dimension of his genealogy – his view of history as text and of genealogy as a mode of

¹⁶⁶ *Ibid.*, 2, 54ff. Cf. Barry Barnes, *Scientific Knowledge and Sociological Theory* (London, UK: Routledge and Paul Kegan, 1974); David Bloor, *Knowledge and Social Imagery* (London, UK: Routledge and Paul Kegan, 1973); Quentin Skinner, *The Foundations of Modern Political Thought* (Cambridge, UK: Cambridge University Press, 1978).

¹⁶⁷ Cf. Bartelson, *Genealogy of Sovereignty*, 69.

¹⁶⁸ *Ibid.*, 5. There are three types of co-productive relationships between sovereignty and knowledge: supplementation, articulation, and duplication (*ibid.*, 7).

¹⁶⁹ *Ibid.*, 5.

¹⁷⁰ *Ibid.*, 69ff.

¹⁷¹ *Ibid.*, 6. Though he does not discuss this very explicitly, Bartelson’s notion of “narrative structure” and “emplotment” seem inspired not least by the philosophies of history of Ricoeur and White. Cf. Paul Ricoeur, *Time and Narrative* (Chicago, IL: University of Chicago Press, Vol. 1-3, 1990 [1983]), esp. chap. 2; Hayden White, *Metahistory: The Historical Imagination in Nineteenth-Century Europe* (Baltimore, MD: Johns Hopkins University Press, 2014 [1973]).

¹⁷² Bartelson, *Genealogy of Sovereignty*, 78.

writing – enables a practically reflexive analysis of the relationship between sovereignty and knowledge which can simultaneously recognize and implement this observation.

“‘[R]eflexivity,’” Inanna Hamati-Ataya argues, “appeared [in IR as well as in other social sciences] when positivism’s epistemic premises” – its correspondence theory of truth, its representational understanding of knowledge, and its Cartesian view of the subject – “were challenged by historicist analyses of knowledge.”¹⁷³ Like other historicist analyses of knowledge during the late 1980s to mid-1990s, the first generation of IR genealogies conceived of itself as a response to the problem posed by positivism and its underlying assumptions. In the two genealogies reviewed here, differing understandings of the problem of positivism went hand in hand with differently constructed and implemented reflexive dimensions to genealogy as a way of knowing. Der Derian, for whom the problem with positivism was its “totalizing” claim to and conduct of theory, posed genealogy as an alternative, postpositivist mode of theorization that could open up new ways of thought. In so doing, his genealogy reflexively made sense both of its object and of itself (and thus of the knowing and theorizing subject) through the concept of alienation. Bartelson, for whom the problem with positivism was that its foundational assumptions obstructed it from grasping the political nature of knowledge, proposed genealogy as a kind of historical analysis that could situate itself outside the positivism-postpositivism debate, yet inside history. In this, genealogy’s practically reflexive aspect lay in its mode of writing, which in its emplotment could not but repeat the narrative structures of the histories it studied.

What are we to make of this? While Der Derian and Bartelson differ over what exactly genealogy is and does with respect to positivism, they agree that it is about de-naturalization: that genealogy “[disturbs] many of the conventions that have long stood as the natural truths of the field,” as Der Derian writes¹⁷⁴, and that it “seeks to

¹⁷³ Inanna Hamati-Ataya, “Reflectivity, Reflexivity, Reflexivism: IR’s ‘Reflexive Turn’ – and Beyond,” *European Journal of International Relations* 19, no. 4 (2012), 669-694, at 671.

¹⁷⁴ Der Derian, Shapiro, “Preface and Acknowledgements,” ix.

put everything that is evident at present into historical motion,” as Bartelson puts it.¹⁷⁵ However, as the idea of seemingly ahistorical objects being socially constructed has by now become widely recognized in the social and historical sciences¹⁷⁶, genealogies aiming merely to de-naturalize that which is presumably taken for granted can arguably no longer reckon on having a surprise effect for positivists, and might even “be greeted as redundant” by postpositivists.¹⁷⁷ In this context, I contend that what the first generation of genealogies in IR has to offer to us today is not a manual of how exactly genealogical methods should or should not be implemented, but an example of how genealogy can be something other than a ready-made method, of how it can amount to a critical praxis. From Bartelson, we can gather that “historical knowledge itself is an object of inquiry rather than a ready possibility,”¹⁷⁸ whereas from Der Derian, we can learn that “at a certain moment, therefore, it is necessary to turn against Method, or at least to treat it without any founding privilege.”¹⁷⁹ To take seriously and make good on these insights, genealogy can, through its concepts and through its practices, inquire into the interrelated formation of objects and subjects of knowledge in a way which recognizes that “we are historical beings all the way down.”¹⁸⁰ Taken together, genealogy thus emerges from Der Derian’s and Bartelson’s examples as a way of doing research, or of “doing our knowing,” in which reflexivity is practically embedded throughout and within the analysis to the effect that genealogy itself is processualized and put into motion.

Towards genealogy as critical praxis

Thus far, this second part of the chapter has done two things. First, I have discussed the tendency of contemporary proposals for genealogy in IR to practice genealogy as

¹⁷⁵ Bartelson, *Genealogy of Sovereignty*, 74.

¹⁷⁶ Cf. Ian Hacking, *The Social Construction of What?* (Cambridge, MA: Harvard University Press, 1999).

¹⁷⁷ Koopman, *Genealogy as Critique*, 146.

¹⁷⁸ Bartelson, *Genealogy of Sovereignty*, 75.

¹⁷⁹ Der Derian, “Boundaries of Knowledge,” 7, quoting Roland Barthes, *Image – Music – Text* (New York, NY: Hill and Wang, 1977), 201.

¹⁸⁰ Bartelson, *Genealogy of Sovereignty*, 78, cf. 74.

a research method, i.e. as a two-step procedure in which genealogy is first specified and then applied to empirical materials. I have argued that this “methodologism,” or outsourcing of a genealogist’s knowledge practices from the actual analysis, limits the critical scope of genealogy: it risks exempting our ways of knowing as well as their preconditions in and their effects on our problematizations, our disciplines and ourselves from the purview of genealogical critique. Thereafter, I have delineated the ways in which the first generation of genealogies in IR, exemplified by the works of Der Derian and Bartelson, put into question genealogy within its analyses of the relationship between politics and knowledge. In particular, I have shown how the two authors under review used the concepts (“alienation”) and modes (discourse, narrative, writing) through which they sought to produce knowledge of their research objects to simultaneously put into motion genealogy itself. Now, two tasks remain: to explain why the practice of genealogy as method is problematic for this thesis in particular, and to begin to clarify the link between genealogy’s capacity for practical reflexivity and its critical purpose.

In the main, there are three reasons why an understanding of genealogy as method constitutes a problem for this thesis. First, as the first part of this chapter has hinted at and as the remainder of this thesis will argue in detail, our ways of knowing war have historically helped to produce and reproduce how war constitutes a problem of international politics. Therefore, understanding and practicing genealogy as a method – as specified prior to the analysis and thereby exempted from critique – would make for a genealogical analysis of war’s problematization that would fail to live up to its own insights. Secondly, such an analysis would also fail to make good on several of the most thought-provoking aspects of Foucault’s genealogical analyses. As I will discuss in Chapter 2, amongst these aspects are not only Foucault’s insights, emphasized by many of the genealogists discussed in this chapter, into the inevitable entanglement of knowledge and power, but also his way of working out his concepts

and his knowledge practices through his engagement of empirical materials.¹⁸¹ Finally, insofar as recent proposals of genealogy as a research method fall short of realizing genealogy's reflexive potential, they might be but one example of IR's more general failure to treat methods as part of the world and thereby to grasp them as sites for and objects of politics and critique.¹⁸² As one of the aims of this thesis is to spell out what a historical and reflexive dimension to this understanding of methods as this-worldly could look like, to practice genealogy as a method would be self-contradictory.

How, then, does the practical reflexivity exemplified by Der Derian's and Bartelson's analyses contribute to critique? The question is more controversial and complicated than it might seem at first sight. Aradau and colleagues, for instance, argue that "[m]aking the political life of methods a central component of [our analytical frameworks] allows critical approaches to engage with methods-focused developments in ways that sustain a reflexive disposition."¹⁸³ Bartelson, however, is sceptical of whether his genealogy can be critical: his view of history as text and of genealogy as a mode of writing leads him to argue that "either a genealogy [...] would be confined within the limits of discourse," in which case it would lack the "external foothold from which to criticize the discourse it analyses," or that it would have to "transcend the logical limits of discourse," but thereby become itself an exercise of power.¹⁸⁴ Therefore, Bartelson seeks to do no more than "to comment upon and to criticize existing philosophical and historical accounts of sovereignty."¹⁸⁵

At this point, I can do no more than restate my argument and refer the reader to the remainder of this thesis. For a genealogy to develop a farther-reaching critique of our problematizations, our disciplines, and ourselves, it needs to make sense of the

¹⁸¹ Not to try to make good on this would be a pity not because, as Vucetic insinuates, this thesis aspired to a true or pure Foucauldian analysis, but rather because it would mean to forego some of the analytically most intriguing and politically most important challenges Foucault still holds for us today (cf. Vucetic, "Genealogy as research tool," 1306f.).

¹⁸² Cf. Aradau, Huysmans, "Critical methods in IR."

¹⁸³ Aradau, Huysmans, Neal, Voelkner, "Introducing Critical Security Methods," 15.

¹⁸⁴ Bartelson, *Genealogy of Sovereignty*, 82.

¹⁸⁵ *Ibid.*, 7.

interrelationship between our ways and practices of knowing and these other subjects of critique. To do this, genealogy needs to make sure not to exempt its analytical procedures from the insights of its analysis. As suggested by my reading of Der Derian and Bartelson, one way of doing this is to build a practically reflexive dimension into the genealogical analysis. In this way, as I will further explain in the next chapter and as I hope the rest of the thesis will demonstrate, it is possible to at least try to subject our ways of knowing to genealogy's critical insights – not only to disrupt these ways, but also to produce empirical materials with which to get to work on our ways of knowing and being, and to in fact begin to do our knowing differently.

To reiterate, the problem about genealogy as method is not that some elements of genealogy are fixed before the actual analysis. Indeed, in the remainder of this thesis I will use quite a few of the concepts and practices suggested and relied upon by the IR genealogies reviewed in the first section of this part of the chapter, and I do not claim to have derived all of these concepts and practices inductively, or to use all of them in reflexive ways only. Rather, the problem of genealogy as a method, I want to suggest, begins when we do not make enough of an effort to systematically create, or incidentally leave open, a space in which genealogy could conceive of itself and its conduct as *in principle* historical and contingently in flux, let alone as *in practice* continuously in the process of being made.

Conclusion

My aim in this chapter has been twofold. First, I wanted to offer a rationale for what this thesis takes as its dual starting point: namely, that “war” and method currently constitute problems, and that it would therefore be a worthwhile endeavour to submit them to a sustained genealogical inquiry. To this end, I sought to locate and trace these two respective problems in two different examples.

On the one hand, I looked at transitional justice, taken here as an example of contemporary international post-atrocity politics, to sketch war's becoming a problem

of these particular politics. Specifically, I argued that transitional justice constitutes an example of a curious knowledge-action-nexus in which war can be acted upon insofar as it can be known about, and I pointed out different frames which help produce war as a particularly formulated problem. Following up on this example, the historical chapters to come all revolve around the question of war's becoming an epistemic and actionable object, yet they take this question in many different directions – indeed, in as many directions as the primary sources and the temporal and practical constraints of a research project such as this one allow for.

On the other hand, I looked at genealogy, understood as one particular among IR's myriad ways of doing research, to delineate in how far method constitutes a problem for critique. Here, I argued that recent genealogical research in IR, through its practice of first specifying and then applying genealogy as an analytical tool, tends to exempt genealogy's practices and procedures from the purview of its critical insights. I then discussed how a first generation of IR genealogies practiced genealogy as conceptually and practically reflexive. In the chapters to follow, I take inspiration from this first generation to develop genealogy into a critical praxis which seeks to actively try and alter its own practices and its entanglement with the problematizations it studies.

Next to providing starting points for the analysis to come, my second aim in this chapter has been to begin to account for how I first came to these starting points. In this vein, I have discussed how my concern with “war” as an object of knowledge and action was originally an interest in transitional justice's curiously taken for granted assumption about the purposiveness of searching for the “truth” about past violence for the prevention of future violence. I have also pointed out how my take on genealogy as a reflexive and practical way in fact developed out of a fascination with genealogy as a method for studying the histories of that which we take for granted. The chapter has not only offered some starting points for the genealogy which the remainder of this thesis will develop, but it has also, or so I hope, indicated how conducting a genealogy led me to see my original starting points in a new way.

Chapter 2

“The action thought takes en route to being”: Genealogy as history/critique, problematization, and critical praxis

The previous chapter has proposed two problems for this thesis to work on, or two objects to be subjected to critique: the idea that war constitutes a problem whose future recurrence can be prevented by means of knowledge about its past occurrence, and the understanding and practice of genealogy as a method. Taking up these threads, my intention in this chapter is to begin to spell out how the proposed genealogy of war as a problem of international politics proceeds. What kind of history and what kind of critique does genealogy as developed here consist in? How can a genealogy work on the emergence of the problem of war while simultaneously taking itself to be an emergent problem? How can genealogy be comprehended on the same terms as the object it is intended to work on – as *in principle* contingent and in flux and as *in practice* continuously in the process of being made? This chapter addresses these methodological, conceptual and practical questions to suggest genealogy as history/critique, problematization, and critical praxis.

Before getting started on the task at hand, a clarification seems in order. In IR, methodology is usually not only understood as a systematic reflection about methods, but also taken to be of a higher order than and necessarily antecedent to the use of methods in the actual practice of research.¹ In his article on genealogy as a research tool, for instance, Vucetic defines methodology as “a theory on how research is or should be done, given the assumptions regarding the status of reality (ontology) and/or its place in a knowledge domain (epistemology),” while “[m]ethods, in turn, are techniques for accessing data on that which exists to be known.”² However, this

¹ Cf. Aradau, Huysmans, “Critical methods in IR,” 601.

² Vucetic, “Genealogy as a Research Tool,” 1297.

assumption about the primacy of methodology has recently come under criticism.³ For Aradau and Huysmans, for instance, the kind of reasoning which Vucetic exemplifies relegates methods “to the dustbin of history,”⁴ while methodology is presumably “rescued [...] from the tyranny of method” by being “reframed as an overarching epistemological and methodological reflection.”⁵ On the whole, IR’s most common take on methodology and methods risks rendering both of them apolitical and uncriticizable. Yet if, as this thesis sets out to do, methods are no longer taken as ready-made tools, but as this-worldly, historical, and subject to critique, where does this leave methodology?

An alternative notion of methodology to the one just sketched out is provided by Mary Hawkesworth.⁶ Hawkesworth argues that methodologies, in light of their role in the historical emergence of distinct academic disciplines and of their specificity to these disciplines as social communities, are of a political nature. The argument is prefaced by an etymological discussion of how “the term ‘methodology’ arises from the conjunction of three Greek concepts: meta, hodos, and logos,” a conjunction which can be translated to mean, inter alia, “the way a group legitimates knowledge claims,” or also “the action thought takes en route to being.”⁷ For the purposes of this thesis, these understandings of methodology are very helpful indeed: while the former indicates the social and political nature of knowledge and its criteria, the latter hints at the processes through which knowledge comes about and thus at our ways of knowing in the literal sense of the phrase. With this two-fold understanding in mind, it becomes possible to conceive of methodology as a reflection on methods which is neither strictly

³ E.g. Aradau, Huysmans, “Critical methods in IR”; Roland Bleiker, “Pluralist Methods for Global Visual Politics,” *Millennium: Journal of International Studies* 43, no. 3 (2015), 872-890. For a similarly sceptical statement about the presumed primacy of methodology from the perspective of philosophy, cf. Koopman, *Genealogy as Critique*, 27, 59.

⁴ Aradau, Huysmans, “Critical Methods in IR,” 602.

⁵ *Ibid.*, 597.

⁶ Mary Hawkesworth, “Contending Conceptions of Science and Politics: Methodology and the Constitution of the Political,” in Dvora Yanow, Peregrine Schwartz-Shea (eds.), *Interpretation and Method: Empirical Research Methods and the Interpretive Turn* (London, UK: M.E. Sharpe, 2006), 27-49.

⁷ Hawkesworth, “Contending Conceptions,” 28. On methodology as “the logos of method,” cf. Aradau, Huysmans, “Critical Methods in IR,” 604.

separate from the practice of research nor encompassing it, which is systematic without aiming for closure, and which is itself an ongoing process and thereby aware of its politicality.⁸

This clarification of what methodology could be once we let go of methods as ready-made is simultaneously a disclaimer and a programmatic statement. The disclaimer: while this chapter compiles many of my reflections about how this thesis arrives at its findings and arguments, I did not actually undertake all of this reflective work prior to the research that went into the following chapters. Rather, a lot of my thinking about genealogy happened through my work on archival sources and empirical examples, and it is brought together in this chapter not to create the impression that it had happened in anticipation, but rather to make the thesis writable and readable. However, one might still say that this is what most research processes look like. Hence, the programmatic statement: the processes through which methodologies are constructed need to be undertaken consciously and made explicit. This means that in this thesis, there is more to the research process than the back and forth between induction and deduction of which most research consists: I interweave the practice of the research and the reflection upon this practice to appreciate the processual and political nature of methods and of methodologies.

This chapter reports and reflects on the actions my thinking has taken en route to being in three main sections. Since the thesis draws on the work of Michel Foucault for inspiration, orientation and practical know-how, I begin this chapter by putting Foucauldian genealogy into two contexts – that of Foucault’s methodologies, and that of Nietzsche’s genealogies – to make sense of genealogy as a particular kind of history and a particular kind of critique. In the second section, I turn to a number of concepts through which the findings and argument of the thesis unfold. Next to

⁸ Cf. Aradau, Huysmans, “Critical Methods in IR,” 598; Bleiker, “Pluralist Methods,” 881. If one wanted to take on board this understanding of methodology yet continue to think about methodology as a kind of theory of methods, this might be achieved via Der Derian’s understanding of “meta theory” as “a form of reanalysis that disturbs the complacency of received knowledge” (Der Derian, “The Boundaries of Knowledge,” 7).

problematization, the key concept which I use to make sense of genealogy and its object, I also rely on the concepts of practice, co-production, and critical praxis. In the third and final section, I then begin to move the discussion towards this praxis. To this end, I explain a number of crucial decisions I have taken over the course of the research process, decisions concerning the historical period and examples I focus on, the kinds of primary sources I use, the methods by means of which I collect and analyze these sources – and the ways in which I seek to break with these methods. The chapter concludes with a reflection on genealogy as a mode of curiosity.

In context: genealogy as history and critique

To clarify what kind of history and what kind of critique genealogy aspires to be, in this section I consider Foucauldian genealogy in two contexts: that of Foucault's methodologies, and that of Nietzsche's genealogies.⁹ This reading assumes that although Foucault developed his methodologies (e.g. genealogy) in tandem with his concepts (e.g. governmentality), it is feasible to focus on the former without simultaneously engaging with the latter.¹⁰ At the same time, my reading is aware that in an important sense, genealogy is a concept just as well: as Foucault's work does not contain a neat and unambiguous definition of genealogy, our understanding that one or another part of this work constituted a genealogy cannot avoid amounting to, in Gary Gutting's terms, a "retrospective (and usually idealized) [description] of Foucault's complex efforts to come to terms with his historical material."¹¹ Not least for this reason, my aim in this section is not to offer an exegetical reading of Foucault, but rather to look at Foucault's writings in order to spell out what genealogy as history

⁹ This reading takes its inspiration from Colin Koopman's *Genealogy as Critique*, esp. ch. 1 and 2.

¹⁰ Colin Koopman, Tomas Matza, "Putting Foucault to Work: Analytic and Concept in Foucaultian Inquiry," *Critical Inquiry* 39, no. 4 (2013), 817-840. For a countervailing statement, cf. Martin Saar, *Genealogie als Kritik* (Frankfurt a.M., Germany: Suhrkamp, 2007), at 252. In Foucauldian IR, conceptual engagements of Foucault seem to far outnumber methodological engagements (indicatively, cf. Nicholas J. Kiersey, Doug Stokes (eds.), *Foucault and International Relations: New Critical Engagements* (Oxford, UK: Routledge, 2011)).

¹¹ Gary Gutting, *Foucault: A Very Short Introduction* (Oxford, UK: Oxford University Press, 2005), at 6f.

and as critique can be and to relate how I have made use of this basic understanding of genealogy in developing the thesis.

The relationship between archaeology and genealogy within Foucault's work has been the subject of a considerable debate.¹² In the context of this debate, Koopman suggests to understand Foucault's move from archaeology to genealogy as a "methodological expansion" rather than a repudiation or a rupture.¹³ Unsurprisingly, seen through this lens archaeology and genealogy have a lot in common. Notably, they share what Bonditti and colleagues refer to as Foucault's "epiphenomenal" approach¹⁴, and what Paul Veyne has called Foucault's eluding of "natural objects"¹⁵: both genealogy and archaeology do not take their research objects to be unified or given, but rather describe and analyze them as dispersed within (discursive) orders or spaces.¹⁶

And yet, there are important differences between genealogy and archaeology. For one, while archaeology aims to describe the continuity of its research objects¹⁷, genealogy seeks to account for both continuities and changes in them.¹⁸ This is not to say that Foucault's archaeological analyses did not recognize discontinuities; *The Order of Things*, for instance, identifies three subsequent orders of knowledge.¹⁹ However, archaeology does not attempt to provide the analytical means for making sense of the

¹² For an example from IR, cf. Andrew Neal, "Foucault in Guantánamo: Towards an Archaeology of the Exception," *Security Dialogue* 37, no. 1 (2006), 31-46.

¹³ Koopman, *Genealogy as Critique*, 30, cf. 131; cf. Paul Rabinow, Hubert Dreyfus, *Michael Foucault: Beyond Structuralism and Hermeneutics*, 2nd ed. (Chicago, IL: University of Chicago Press, 1983), at 84ff. For a similar take on genealogy and archaeology within IR, cf. Bonditti et al., "Genealogy," 166f.

¹⁴ Bonditti et al., "Genealogy," 166.

¹⁵ Paul Veyne, "Foucault Revolutionizes History," in Arnold Ira Davidson (ed.), *Foucault and His Interlocutors* (Chicago, IL: University of Chicago Press, 1997), 146-182, at 149f.

¹⁶ Michel Foucault, *The Archaeology of Knowledge*, translated by A. M. Sheridan Smith (London, UK: Tavistock Publications 2000 [1969]), at 10; cf. Koopman, *Genealogy as Critique*, 97f.; Neal, "Foucault in Guantánamo," 37; Bentley Allan, "From Subjects to Objects: Knowledge in International Relations Theory," *European Journal of International Relations* 24, no. 4 (2018), 841-864.

¹⁷ Cf. Michel Foucault, *Die Wahrheit und die juristischen Formen*, translated by Michael Bischoff (Frankfurt a.M., Germany: Suhrkamp, 2003 [1973]), at 150f. (The appendix to *Truth and the Juridical Forms* is not reproduced in the English edition in Faubion's edited volume *Essential Works, Volume 3* – hence, I cite from the German translation.)

¹⁸ Cf. Michel Foucault, *The History of Sexuality, Vol. 1: The Will to Knowledge*, Translated by Robert Hurley (London, UK: Penguin Books, 1998 [1978]), 10f.

¹⁹ Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences* (New York, NY: Vintage Books, 1994 [1970]).

waning of one order and the onset of the next.²⁰ This is different for genealogy. In *Discipline and Punish*, for example, Foucault's aim is to explain how the prison became a dominant way of disciplining in the modern, Western world.²¹ To accomplish this kind of analysis, genealogy, unlike archaeology, has not one, but always at least two analytical foci. Hence, *Discipline and Punish* is a "genealogy of the contemporary science/justice complex" which endeavours to offer a "correlative history of the modern soul and of a new power to judge."²² While Foucault's archaeologies are singularly focused on knowledge and its history, his genealogies always attend to knowledge in relationship to something else – to power, as one of Foucault's most famous concepts has it – and their analytical focus is less on these two objects than on the relationship between them and on what this relationship produces.²³ In this way, genealogy seeks to go beyond the descriptions of different orders offered by archaeology and to account for discontinuities between them.²⁴

In hindsight, fathoming Foucault's "epiphenomenal" approach and figuring out my genealogy's actual foci was one of the most challenging aspects of my research process. As Chapter 1 has explained, my original interest was in "truth," and more precisely in the history of what I thought of as the curiously taken for granted will to true knowledge about war that characterizes contemporary international post-atrocity politics.²⁵ The process that took me from this initial interest to a genealogy of war as problem of international politics has been as contingent as any of the processes I study in this thesis. It hinged upon lucky coincidences of conceptual ideas and archival

²⁰ Cf. Koopman, *Genealogy as Method*, 36f.; Gutting, *Foucault*, 12f.

²¹ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, Translated by Allen Lane (London, UK: Penguin, 1991 [1975]).

²² *Ibid.*, 23.

²³ Cf. Koopman, *Genealogy as Critique*, 31.

²⁴ Genealogy is often criticized for being unable to account for change (e.g. Milliken, "The study of discourse," 246ff.). However, this criticism is perhaps more appropriately directed at different examples of genealogical analyses rather than at genealogy *per se*.

²⁵ I was also guided by Philipp Sarasin's categorization of Foucault's genealogies as a variant of History of Knowledge (Philipp Sarasin, "Was ist Wissensgeschichte?," *Internationales Archiv für Sozialgeschichte der deutschen Literatur* 36, no. 1 (2011), 159-172). Cf. Johan Östling, David Larsson Heidenblad, Erling Sandmo, Anna Nilsson Hammar, Kari H. Nordberg (eds.), *Circulation of Knowledge: Explorations in the History of Knowledge* (Lund, Sweden: Nordic Academic Press, 2018).

materials that I could not have planned for, as when in working on the sources I had gathered on the Balkan Commission, I suddenly found differently structured formulations of war as a problem (see Chapter 3). At the same time, however, it was also an incremental process – as Foucault writes, genealogy “requires patience and a knowledge of details”²⁶ – that often evolved through multiple iterations, as exemplified in the numerous attempts it took me to wrestle through the sources I had collected on the Advisory Commission of Jurists (see Chapter 4).

These last points already speak to another crucial difference between archaeology and genealogy: namely, their differing capacity for making sense of how their research objects are situated in history. Here, Koopman suggests that while archaeology can only understand change within its research objects through a “single temporality of rupture,” genealogy can conceive of its objects within multiple “temporalities of shift, evolution, continuity, event, and problem.”²⁷ Whereas archaeology is a history of its objects’ (albeit dispersed and multifarious) *being* in different epochs, genealogy is a history of (potentially contradictory) *becomings* and *emergences* that treats its objects, Foucault wrote, as “[resulting] from substitutions, displacements, disguised conquests, and systematic reversals.”²⁸ In a way, my research process’s above-mentioned sudden changes and incremental evolutions mirror the complex temporal configuration of what I researched. To keep things manageable, the thesis focuses on one historical change in particular, namely on the transformation of “war” from a relatively readily available means of international politics into a problem to be tackled. While I will discuss this decision in more detail in the final section of this chapter, what bears mentioning here is that as I subjected this transformation to closer scrutiny, it morphed into a multiplicity of transformations. Hence, the genealogy of the

²⁶ Foucault, “Nietzsche, Genealogy, History,” 76.

²⁷ Koopman, *Genealogy as Critique*, 31, 132. Neal’s reading of *The Archaeology of Knowledge* is different: he argues that in this archaeological work, Foucault’s understanding of change within his research objects was already shifting, with the effect that “the figures of both the ‘new’ and the ‘same’ lose their transcendental qualities” (Neal, “Foucault in Guantánamo,” 37). Nonetheless, it was only in Foucault’s genealogical works that the multiplicities of ways in which change can figure in history was spelled out more fully.

²⁸ Foucault, “Nietzsche Genealogy History,” 86.

emergence of “war” as a problem of international politics proposed in this thesis finds its research object to be constituted of different kinds of overarching and minute, abrupt and cumulative, deliberate and accidental changes.

Incidentally, Foucault’s first discussion of his understanding of emergence can be found in his essay *Nietzsche, Genealogy, History*, a text which is often cited to argue for reading Foucault and Nietzsche together.²⁹ And indeed, Nietzsche’s and Foucault’s genealogies have a lot in common.³⁰ It is not without reason that Foucault, in *Truth and the Juridical Forms*, calls Nietzsche’s work an analytical “model”³¹: as Foucault explains, it was Nietzsche who first turned against the Platonic idea of knowledge as the antithesis of power and who first sought to point out that “behind all knowledge [...] there is a struggle for power.”³² In *Nietzsche, Genealogy, History*, Foucault draws on Nietzsche’s work to distinguish emergence (*Entstehung*) from descent (*Herkunft*) and thereby to refute an understanding of history as a search for the origin and the identity/sameness of a research object in favour of genealogy as a history not of the past, but of the present.³³ Importantly for the purposes of this thesis, genealogy as a history of the present demands a reflexive dimension: as Foucault writes, again with reference to Nietzsche, genealogy must “create its own genealogy in the act of cognition.”³⁴

However, there are also several aspects in which Foucault’s and Nietzsche’s genealogies diverge. For one, Nietzsche and Foucault differ on the meaning of critique as well as on the value of historical analysis for critique.³⁵ Nietzsche’s genealogies

²⁹ Bartelson, *Genealogy of Sovereignty*, ch. 3; Der Derian, *On Diplomacy*, ch. 4; Vucetic, “Genealogy as a Research Tool,” 1302.

³⁰ Cf. Saar, *Genealogie als Kritik*.

³¹ Michel Foucault, “Truth and the Juridical Forms,” in Michel Foucault, *Essential Works, Volume 3: Power*, Edited by James Faubion, Translated by Robert Hurley et al. (London, UK: Penguin Books, 1994), at 6.

³² *Ibid.*, 32, cf. 12, 51f.; cf. Michel Foucault, *Lectures on the Will to Know: Lectures at the Collège de France, 1970-1971*, Translated by Graham Burchell (Basingstoke, UK: Palgrave Macmillan, 2011).

³³ Foucault, “Nietzsche, Genealogy, History,” 77ff.

³⁴ *Ibid.*, 90.

³⁵ Cf. Koopman, *Genealogy as Critique*, ch. 2. For a more general discussion of the role of history for critique, cf. Reinhart Koselleck, “Wozu noch Historie?,” *Historische Zeitschrift* 212, no. 1 (1971), 1-18.

study the coming-into-being of moral values in order to judge, subvert, or even destroy these values: “what meaning does *our* being have, if it were not that that will to truth has become conscious of itself *as a problem* in us? . . . Without a doubt, from now on, morality will be *destroyed* by the will to truth’s becoming-conscious-of-itself.”³⁶ Foucault clearly perceived Nietzsche’s ultimately destructive intentions vis-à-vis truth and the knowledgeable subject, and he agreed with Nietzsche that genealogy, as a kind of historical research which could “[have] value as a critique,” needed “to discover that truth or being does not lie at the root of what we know and what we are.”³⁷ Yet Foucault’s own genealogies mostly do not seek to judge, subvert, or destroy.³⁸ Rather, their critical aim is focused on the logical antecedents of judgement and on describing the preconditions that enable and constrain our present ways of knowing and being.

The point about critique as a concern about the preconditions of our present ways has been made in various inflections. In Foucault’s own words, it means that “critique is not a matter of saying that things are not right as they are. It is a matter of pointing out on what kinds of assumptions, what kinds of familiar, unchallenged, unconsidered modes of thought the practices that we accept rest.”³⁹ For Ann Laura Stoler, this critical orientation leads to a concern “with the legitimating social coordinates of epistemologies: how people imagine they know what they know and what institutions validate that knowledge, and how they do so.”⁴⁰ Meanwhile, for Judith Butler, it implies that “the primary task of critique will not be to evaluate whether its objects –

³⁶ Friedrich Nietzsche, *On the Genealogy of Morals: A Polemic*, Translated with an Introduction and Notes by Douglas Smith (Oxford, UK: Oxford University Press, 1996 [1887]), at III.27, italics in original.

³⁷ Foucault, “Nietzsche, Genealogy, History,” 81.

³⁸ However, see the discussion in the appendix of “Truth and the Juridical Forms” Foucault seems to affirm a need to destroy the will to truth (Foucault, *Die Wahrheit*, 138). In the context of his preceding remarks on philosophy, linguistics and rhetoric, it seems to me that what is to be destroyed here is not science or philosophy as such, but philosophy’s metaphysical ambitions – i.e. not the will to truth as such, but a specific formation of it.

³⁹ Michel Foucault, “Practicing Criticism,” in Michel Foucault, *Politics, Philosophy, Culture: Interviews and Other Writings, 1977-1984*, Translated by Alan Sheridan et al. (London, UK: Routledge, 1990 [1988]), 152-156, at 154; cf. Ian Hacking, *Historical Ontology* (Cambridge, MA: Harvard University Press, 2004), at 24f.; Koopman, *Genealogy as Critique*, 17, 95.

⁴⁰ Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton, NJ: Princeton University Press, 2002), at 95.

social conditions, practices, forms of knowledge, power, and discourse – are good or bad, valued highly or demeaned, but to bring into relief the very framework of evaluation itself,” entailing the question of how “our epistemological certainties turn out to support a way of structuring the world that forecloses alternative possibilities of ordering.”⁴¹ And for Ian Hacking, it means that it is the processes through which “our present conceptions were made” that “constrain our present ways of thinking.”⁴² These different formulations of critique as a concern with the preconditions of our ways of knowing and being have been very influential in the development of the genealogy presented in this thesis. A genealogy of the will to knowledge about war, when implemented as an inquiry into the antecedents of our contemporary ways of knowing about and acting against war, is not about judging post-war truth-seeking efforts to be good or bad. Rather, it serves to raise questions about the ways in which we make war a problem and about how these ways produce subjects more or less affected by war and therefore more or less capable of addressing it.⁴³

What are we more generally to make of the differences between Nietzsche’s and Foucault’s critical intentions? We might say, as Koopman does, that the comparison makes Foucauldian genealogies appear “normatively modest”⁴⁴: while Nietzsche delivered a damning judgment of the will to truth – “[s]cience itself now *needs* a justification (which is not at all to say that there is one for it)”⁴⁵ –, Foucault’s more humble aim was to raise critical questions.⁴⁶ We could also note that, insofar as in

⁴¹ Judith Butler, “What is Critique? An Essay on Foucault’s Virtue,” in David Ingram (ed.), *The Political: Readings in Continental Philosophy* (London, UK: Basil Blackwell, 2002), 212-227, at 214.

⁴² Hacking, *Historical Ontology*, 24f.

⁴³ For a similarly inclined critical-genealogical work, cf. Kinsella, *The Image Before the Weapon*.

⁴⁴ Koopman, *Genealogy as Critique*, 61. Foucault spoke of this aspect of his critique not as modesty, but as a “prudent attitude”: “Prudent in my analysis, in the theoretical and moral postulates that I use. I try to figure out what’s at stake” (Michel Foucault, “Power, Moral Values, and the Intellectual, an interview with Michael Bess,” *History of the Present* 4 (1980), at 12).

⁴⁵ Nietzsche, *Genealogy of Morals*, III.24, italics in original.

⁴⁶ At stake in the proposal that Foucauldian genealogy is “normatively modest” are several larger arguments about the viability of this kind of critique. On the one hand, Koopman thereby defends Foucauldian genealogy against the charge of committing a genetic fallacy – or the idea that something can be judged as good or bad (solely) on the basis of its origin or history (Koopman, *Genealogy as Critique*, 62ff.). On the other hand, against critical theorists such as Habermas, Koopman maintains that it is possible – for Foucauldian genealogy and in general – to be “critically effective” without

Foucault's genealogical works "[t]he critique of what we are is at one and the same time the historical analysis of the limits imposed on us and an experiment with the possibility of going beyond them,"⁴⁷ Foucauldian genealogies are productive rather than destructive. Or finally, compared to the pessimistic thinker that Nietzsche is often considered to be⁴⁸, we could see in Foucault a more positive spirit, as Foucault himself claims: "My optimism would consist rather in saying that so many things can be changed, fragile as they are, bound up more with circumstances than necessities, more arbitrary than self-evident, more a matter of complex, but temporary, historical circumstances than with inevitable anthropological constants..."⁴⁹ Yet whatever we make of Foucault's understanding of genealogy as critique, the contrast between Nietzsche's and Foucault's works hopefully leaves us less passive and more inclined to take practical action than the currently prevailing reading of genealogy in IR (see Chapter 1) might have us think.

How does this understanding of genealogy as critique figure in this thesis? In the *Genealogy of Morals*, Friedrich Nietzsche demands that "the value of truth is tentatively to be called into question."⁵⁰ Over the course of my research project, I kept wondering what heeding Nietzsche's call could consist in and lead to. While I did not pursue the destructive aims that Nietzsche arguably had in mind, it turns out that I did follow up on that little qualifier, "tentatively." The term "versuchsweise," as Nietzsche put it in the German original⁵¹, could also be translated as "by way of experiment." And indeed, to act on the insights which the genealogy I was conducting

being "normatively robust": "We can show that practices are problematic, dangerous, fraught, and in need of additional attention without making any normative claims about them" (Koopman, *Genealogy as Critique*, 91f.; cf. Jürgen Habermas, *The Philosophical Discourse of Modernity*, Translated by Frederick Lawrence (Cambridge, MA: MIT Press, 1987 [1985]), esp. ch. 9, 10, 12).

⁴⁷ Foucault, "What is Enlightenment?," 319.

⁴⁸ Cf. Koopman, *Genealogy as Critique*, 75. However, note that this view of Nietzsche is not uncontested (e.g. Gilles Deleuze, *Nietzsche and Philosophy*, Translated by Hugh Tomlinson (New York, NY: Columbia University Press, 2006 [1962])).

⁴⁹ Foucault, "Practicing Criticism," 156.

⁵⁰ Nietzsche, *Genealogy of Morals*, 3.24.

⁵¹ Friedrich Nietzsche, "Zur Genealogie der Moral," in Friedrich Nietzsche, *Jenseits von Gut und Böse / Zur Genealogie der Moral*, Kritische Studienausgabe, edited by Giorgio Colli, Mazzino Montinari (Munich, Germany: Deutscher Taschenbuch Verlag, 1999 [1887]), 1.24.

was beginning to produce, I began to experiment with the knowledge practices through which I was doing this genealogy.

While the workings of this experimentation will become clearer over the course of the thesis, a final point I want to clarify here is how Foucault's ambition to enable such an experimentation is related to another noteworthy difference between his genealogies and those written by Nietzsche. Whereas Nietzsche's genealogies are worked out on the basis of a small number of often enough speculative examples, Foucault's genealogies command copious amounts of empirics; they draw on, as Foucault writes, "a vast accumulation of source materials."⁵² For Nietzsche's aim of denouncing our moral values, it suffices to show that these seemingly natural and universal values had not always existed in their present form and content. For Foucault, however, merely demonstrating that our present could have been otherwise is not enough. In order to be critically effective, his genealogies aim to "provide some of the materials people will need to remake themselves," as Koopman notes.⁵³ By providing us with fine-grained knowledge of the historical processes through which our present came about, Foucauldian genealogy's excessive engagement with empirical materials is ultimately intended to enable an experimentation with our contemporary ways, practices, and selves – and with the preconditions thereof.

How important these various differences between Foucault and Nietzsche are, and what we are to make of them with regard to the question of genealogy as critique, is ultimately a matter of perspective. For Martin Saar, the commonalities shared between Nietzsche's and Foucault's genealogies are more decisive. Since in both bodies of work, "[f]rom the destabilization of a certain moral consciousness follows a general call for transformation, not a concrete new proposal for a new form of ethical orientation," Saar argues that both Nietzsche and Foucault ultimately develop a critique which is as "ethically urgent as it is underdetermined."⁵⁴ For Koopman, by

⁵² Foucault, "Nietzsche, Genealogy, History," 76f.; Cf. Koopman, *Genealogy as Critique*, 61f.; Saar, *Genealogie als Kritik*, 260.

⁵³ Koopman, *Genealogy as Critique*, 143.

⁵⁴ Saar, *Genealogie als Kritik*, 254, own translation.

contrast, the divergences between Nietzschean and Foucauldian genealogy are key. These divergences come to “[t]he difference between the *that* and the *how* of contingency,” a point which is crucial because “it makes all the difference between a genealogy that simply reveals our bottomless freedom and a genealogy that gives us the material we need for working on our complexly constituted selves.”⁵⁵ In this context, my point here is neither that reading Foucault and Nietzsche together is wrong, nor that the understanding of genealogy I propose by reading Foucault in contrast to Nietzsche is the only valid understanding of genealogy. Rather, I want to suggest that a differentiating reading can yield an awareness of the different purposes that genealogy as critique can pursue as well as of the multiple forms that it can take.⁵⁶

Amongst these diverse purposes and forms, it is perhaps Foucault’s notion of genealogy as an “infinite reflection” which comes closest to what this thesis is attempting to achieve.⁵⁷ My initial interest was in Foucauldian genealogy as “a model of reflexive social critique” located “at the intersection of reflection and intervention.”⁵⁸ When contrasted with Foucauldian archaeology, genealogy emerges as a particular kind of history which intends to make sense not only of continuity and change as (potentially) co-occurring, but also of processes of becoming. Therefore, genealogy has not one, but at least two foci, in the sense of two research objects which co-produce each other. Furthermore, when contrasted with Nietzschean genealogy, Foucauldian genealogy appears as a particular kind of critique: by analyzing the coming-about as well as the antecedent conditions of our contemporary ways of being, knowing, and doing, it aims to render changeable these conditions and these ways. By processing a large amount of empirical material, Foucauldian genealogy identifies more precisely the conditions that would have to be addressed to enable us to experiment with and push against the limits of our current ways of thinking and judging. And yet, as I have

⁵⁵ Koopman, *Genealogy as Critique*, 140, italics in original; cf. Koopman, Matza, “Putting Foucault to Work.”

⁵⁶ Cf. Koopman, *Genealogy as Critique*, 59.

⁵⁷ Foucault, “Power, Moral Values,” 12

⁵⁸ Koopman, *Genealogy as Critique*, 91, 26.

also discussed, how the particular understanding of genealogy as history and critique derived from these contrasting readings is to be put into action is yet another question.

Another apt way of summarizing the particular understanding of genealogy as history and critique which I take in this thesis, therefore, is to think of it, in Koopman's felicitous yet foreboding turn of phrase, as "the difficult labour of actually coming to recognize something as problematic."⁵⁹ With this in mind, the next section will elaborate the concepts through which I came to recognize both our ways of knowing about war and genealogy itself as problems to be worked on.

Concepts: problematization, practice, co-production, critical praxis

The previous section has argued that genealogy does not take the things it inquires into to be unified or given; rather, it seeks to describe and analyze them as dispersed within different orders or spaces. From this arises the challenge of finding concepts which can make sense of how genealogy's research objects cohere without requiring for them to be coherent, concepts which can help us to analytically come to terms with the heterogeneity of these objects without, however, relying on transcendental categories of thought.⁶⁰ In this section, I will explicate the key concepts which this thesis employs for this purpose: problematization, practice, co-production, and critical praxis. While these concepts did not "emerge from the archive" quite to the same extent that many of Foucault's concepts did⁶¹, they are informed not only by my readings of different secondary literatures, but also by my engagement with primary sources and, most crucially, by the problems this thesis finds, raises, and works on. To paraphrase the matter in the terminology about to be introduced: since concepts have to be relevant to problems, problematization needs to come before conceptualization.⁶²

⁵⁹ Koopman, *Genealogy as Critique*, 242

⁶⁰ Cf. *ibid.*, 53.

⁶¹ Cf. Simon Ganahl cited in Colin Koopman, "Ways of Doing Genealogy: Inquiry after Foucault. A Group Interview with Verena Erlenbusch, Simon Ganahl, Robert W. Gehl, Thomas Nail and Perry Zurn," *Le foucauldien* 3, no. 1 (2017).

⁶² Koopman, *Genealogy as Critique*, 133f.

Problematization

Towards the end of his life, Foucault coined the concept of “problematization” to grasp his research project in its entirety:

“What I tried to do from the beginning was to analyze the process of ‘problematization’ – which means: how and why certain things (behavior, phenomena, processes) became a *problem*... I am studying the problematization of madness, crime, or sexuality.”⁶³

According to this understanding, the term problematization refers to the processes through which problems emerge, through which things come into being as problems, or through which something becomes “an object of concern.”⁶⁴ The question, for Foucault, is “[w]hy this ‘problematization’?” – and following this question, his genealogies seek to inquire into “the conditions in which human beings ‘problematize’ what they are, what they do, and the world in which they live.”⁶⁵

Understood to refer to the process of the emergence of problems, the term problematization can be used to think about both the research object and the practice of the research. As Koopman explains, “problematization was for Foucault both an act of critical inquiry (expressed in the verb form as ‘to problematize’) and a nominal object of inquiry (expressed in the noun form ‘a problematization’).”⁶⁶ Thus understood, *Discipline and Punish*, for instance, inquired into the disciplinary problematization to problematize power/knowledge. Indeed, the upshot of the proposition to use the noun “problematization” to refer to the processual becoming of problems and to employ the verb “to problematize” to signify the practice of research

⁶³ Michel Foucault, *Fearless Speech*, edited by Joseph Pearson (Los Angeles, CA: semiotext(e), 2001 [1983]), at 171, italics in original. Cf. Bonditti et al., “Genealogy,” 169; Koopman, *Genealogy as Critique*, 93. Whether or not Foucault’s project in its entirety should be read through the concept of problematization, or indeed through any one concept in particular, is the subject of a heated discussion amongst Foucault scholars (for an affirmative view, cf. Koopman, *Genealogy as Critique*; for a negative view, cf. Gutting, *Foucault*). For my purposes here, however, the answer one gives to this question is besides the point: what matters is that the concept is useful for my project.

⁶⁴ Michel Foucault, *The History of Sexuality, Vol. 2: The Use of Pleasure*, Translated by Robert Hurley (New York, NY: Vintage Books, 1990 [1985]), at 23f.

⁶⁵ Foucault, *The Use of Pleasure*, 10.

⁶⁶ Koopman, *Genealogy as Critique*, 98.

is that research can be conceived of as part of the emergences of problems that it analyzes. Since “[t]he role of the critical inquirer [...] is therefore not to produce a problematization that does not already have some basis in practice but rather to contribute to the ongoing reproduction of problematizations already under way,”⁶⁷ the concept of problematization helps genealogy to realize its reflexive critical potential: understood as a problematizing practice, genealogy achieves this potential by describing (and hence clarifying) as well as by criticizing (and hence intensifying) existing problematizations.⁶⁸ In this vein, genealogy both articulates our problematizations and pushes against their limits from the inside out.

The concept of problematization thus understood can clarify this thesis’ object and practice of inquiry. As regards the former, Chapter 1 has put forth that I would work on the “knowledge-action-nexus” whereby war is a problem that can be addressed insofar as it can be known. Rendered into the terminology just developed, I seek to inquire into the problematization of war in international politics. To recast this object of inquiry as a problematization helps to make clear, I hope, not only what exactly I am interested in with regard to this object – namely, war’s becoming the problem that it is today – but also what motivates this interest. In pointing to the historicity of war as an object of knowledge and action, I do not mean to insinuate that the problem is somehow less “real” or “true.” I also do not wish to make the problem of war an object of normative judgment, to suggest that we should refrain from trying to address war, or otherwise to denounce the ways in which we currently seek to deal with war. Rather, my intention is to seek out the limits of our understanding of war as a problem, to provide us with some of the materials and some of the impetus needed for getting to work on these limits, and finally, albeit in a small way, to commence this work.

Instead of conceiving of my research object as afflicted by a “lack, need, omission, or sin,” thinking of it in terms of a problematization which research simultaneously

⁶⁷ *Ibid.*, 99; cf. Bonditti et al., *Genealogy*, 169.

⁶⁸ The terminology is Koopman’s (Koopman, *Genealogy as Critique*, 48, 100). The term “intensification” is particularly appealing to me because translated into German, it can mean both “intensivieren” (to make more intense/more difficult) and “zuspitzen” (to taper/make more precise).

clarifies and intensifies makes of it a base “for the elaboration of thought.”⁶⁹ To this end, my interest in the problem of war can be further specified: it is an interest in how *war has been formulated as a problem*, in how it *has become an epistemic and actionable object*.

I am interested, firstly, in how war as a problem has been structured or contextualized, or also in the kinds of problems it has come to be described as. Secondly, while I use the term “epistemic” in a broad sense to connote war as an object of knowledge⁷⁰, I am specifically interested in how, within the context of the historical split between philosophy and science, and hence between theoretical and empirical knowledge of social and political phenomena, war emerged as an object of empirical knowledge.⁷¹ Thirdly, by “actionable,” I refer to war as something that can be acted upon, an object of practical action or of practice.⁷² In legal discourse, an object “is said to be actionable when there are legal grounds for basing a lawsuit on it,”⁷³ whereas in the social sciences, the term has been used to discuss how data (and the uncertainty inherent in

⁶⁹ Koopman, *Genealogy as Critique*, 135.

⁷⁰ To clarify, my usage thus differs from the stricter, Aristotelean sense in which the *episteme*, or scientific knowledge of unchanging objects, is a kind of knowledge that can be distinguished from other such kinds, among them *techne* (art or craft) and *phronesis* (prudential practical judgment) (cf. Richard Parry, “*Episteme and Techne*,” in Edward N. Zalta (ed.), *Stanford Encyclopedia of Philosophy* (2014), <https://plato.stanford.edu/archives/fall2014/entries/episteme-techne/> (last accessed 29 July 2018)). For an IR discussion of this Aristotelean distinction, cf. Hayward Alker, *Rediscoveries and Reformulations: Humanistic Methodologies for International Studies* (Cambridge, UK: Cambridge University Press, 1996), ch. 2; for an application, cf. Christian Bueger, “Making Things Known: Epistemic Practices, the United Nations, and the Translation of Piracy,” *International Political Sociology* 9, no. 1 (2015), 1-18.

⁷¹ Cf. Dvora Yanow, “Thinking Interpretively: Philosophical Presuppositions and the Human Sciences,” in Dvora Yanow, Peregrine Schwartz-Shea (eds.), *Interpretation and Method: Empirical Research Methods and the Interpretive Turn* (London, UK: M.E. Sharpe, 2006), 5-26, at 8.

⁷² As regards its theoretical scope, the term “actionable” might be thought of as falling somewhere between the more specific (Foucauldian) “governable” and the more general (Bourdieuian) “objectivating.” On the former, cf. Graham Burchell, Colin Gordon, Peter Miller (eds.), *The Foucault Effect: Studies in Governmentality* (Chicago, IL: University of Chicago Press, 1991); for an application in IR, cf. Bentley Allan, “From Subjects to Objects.” On the latter, cf. Pierre Bourdieu, *The Logic of Practice* (Cambridge, UK: Polity Press, 1980).

⁷³ And further: the adjective actionable applies “when enough facts or circumstances exist to meet the legal requirements to file a legitimate lawsuit. If the facts required to prove a case cannot be alleged in the complaint, the case is not ‘actionable’ and the client and his attorney should not file a suit” (cf. Collins Dictionary of Law, “actionable,” (2006), <https://legal-dictionary.thefreedictionary.com/actionable> (last accessed 29 July 2018)). Thanks to Marijn van der Sluis for helping me to clarify the legal meaning of “actionable.”

them) can be made into grounds for action.⁷⁴ Taken together, I am thus attempting to write a genealogy of the problematization of war in international politics: of how war has been formulated as a problem and of how it has, for this purpose and in effect of this, been made into an object of knowledge and action.

In the previous chapter, I have proposed that genealogy, taken as a reflexive endeavour rather than a ready-made tool, constitutes a particularly suitable way of conducting this research – and I have noted that one of the ways in which early IR genealogies achieved this reflexivity was through their conceptualizations. On the one hand, to recast the genealogy offered by this thesis as an act of problematization restates the aims I have just mentioned: my thesis not only seeks to describe how war has emerged as a problem, but thereby also to render our ways of addressing this problem further problematic, and ultimately to enable the development of alternatives to these ways. On the other hand, to conceptualize genealogy as problematization also means to understand genealogy as a process, as emergent, and moreover as part of the processes of emergence that it studies and problematizes. This understanding is not only directed against the textbook conception of genealogy as a pre-specified analytical instrument. It also implies that to genealogically analyze (i.e., to problematize) the problematization of war in international politics, I cannot but proceed on the basis of the historical materials offered by this existing problematization. Yet these materials include the ways of knowing on which I myself, trained in the social sciences (and now perhaps turned into an apprentice historian) also rely. The same ways of knowing which constitute a condition of possibility for critical work on the emergence of the problem of war in international politics are also part of this emergence. In this way, the concept of problematization can help to clarify not only my research object and my research practice, but also the inevitable entanglement between these two.

⁷⁴ E.g. Louise Amoore, "Data Derivatives: On the Emergence of a Security Risk Calculus for Our Times," *Theory, Culture & Society* 28, no. 6 (2011), 24-43.

A final point worth noting about the concept of problematization is how it provides for an alternative to the terminology – and, allegedly, the ontology – of war and violence of which Foucault’s earlier works have been accused.⁷⁵ Consider, for instance, Foucault’s historical argument, presented in *Nietzsche, Genealogy, History*, that “[h]umanity does not gradually progress from combat to combat until it arrives at universal reciprocity, where the rule of law finally replaces warfare; humanity installs each of its violences in a system of rules and thus proceeds from domination to domination.”⁷⁶ My intention here is not to side with Foucault or with those who criticize this “hypothesis of war.”⁷⁷ However, since this thesis scrutinizes how we have made war into a problem in order to learn how we can change for the better our contemporary ways of problematizing war, I prefer not to found my reasoning on a terminology or also an ontology of forces and of combat.⁷⁸ Here, the concept of “problematization” offers an alternative. Curiously, the term “problem” originates from a military context – it goes back to an ancient Greek term which initially denoted a protective barricade used by soldiers, yet which “soon came to be used to mean any obstacle,” quandary, or difficulty.⁷⁹ Nonetheless, insofar as genealogy does not assume that the true identity of a thing – or a notion – can be found at its origin, the notion of “problematization” seems more appropriate for conceiving of a genealogy of how war became a problem of international politics.

Practices

Next to emergent problems or problematizations, practices are my second primary unit of analysis. The understanding of practices this thesis proposes is derived from

⁷⁵ Cf. Borg, “Genealogy as Critique in IR”; Dean, “Foucault in Guantánamo,” 40; Johanna Oksala, *Foucault, Politics, Violence* (Evanston, IL: Northwestern University Press, 2012).

⁷⁶ Foucault, *Nietzsche, Genealogy, History*, 85. Cf. Foucault, “Truth and the Juridical Forms,” 14.

⁷⁷ Colin Gordon, “Introduction,” in Michel Foucault, *Essential Works, Volume 3: Power*, Edited by James Faubion (London, UK: Penguin Books, 1994), xi-xli, at xxi.

⁷⁸ For a similar argument, cf. Bartelson, *War in International Thought*, 21ff.

⁷⁹ Giuseppe Bianco, “The Misadventures of the ‘Problem’ in ‘Philosophy,’” *Angelaki: Journal of Theoretical Humanities* 23, no. 2 (2018), 8-30, at 9.

Foucault and his interlocutors.⁸⁰ Foucault never offered a precise definition of the term “practice,” yet others have helpfully chimed in on the matter. According to Paul Veyne, what Foucault as a historian of practices “is talking about is the same thing every historian talks about, namely, what people do.”⁸¹ Practices, that is, are neither intended as explanatory, nor are they explananda. Rather, and relating back to Foucault’s “epiphenomenal” approach mentioned above, they make for a different way of making sense of objects. As Veyne explains, “our practice determines its own objects in the first place. Let us start, then, with that practice itself, so that the object to which it applies is what it is only in relation to that practice.”⁸² For short, practices make objects, or – in the terminology of this thesis – produce problematizations.

It is with recourse to practices that problematizations become analyzable. As Saar points out, problematizations are complicated objects of inquiry: descriptively, they can hardly be rendered “as *one* becoming or even as *one* historical event,” while explanatorily, they are bound to be causally “overdetermined.”⁸³ Faced with the difficulty that “there is no analytically most simple unit of analysis or synthetically most complete unit of analysis” on the basis of which to describe or explain problematizations, Koopman suggests to alleviate the analytical challenge by studying practices.⁸⁴ How might this work? Reflecting on this question in the introduction to *The History of Sexuality, Vol. 2*, Foucault writes that “[i]t was a matter of analyzing, not behaviors or ideas, nor societies and their ‘ideologies,’ but the *problematizations*

⁸⁰ To borrow the title of Arnold Ira Davidson’s edited volume *Foucault and His Interlocutors* (Chicago, IL: University of Chicago Press, 1997).

My understanding of practice differs from what has been discussed, in IR and adjacent disciplines, under the label of “practice theory,” whether inspired by Bourdieusian sociology or by Science and Technology Studies (for the former, cf. Emmanuel Adler, Vincent Pouliot (eds.), *International Practices* (Cambridge, UK: Cambridge University Press, 2011); for the latter, cf. Christian Bueger, Frank Gadinger, *International Practice Theory: New Approaches* (Basingstoke, UK: Palgrave Macmillan, 2014). Unlike these works, my intention in studying “what people do” is not to emphasize the habitual and iterative aspect of practices. For me, practices are a more neutral analytical category – they can be repetitive or changing – intended more simply to make problematizations researchable.

⁸¹ Veyne, “Foucault Revolutionizes History,” 156.

⁸² *Ibid.*, 155.

⁸³ Martin Saar, “Genealogische Kritik,” in Rahel Jaeggi, Tilo Wesche (eds.), *Was ist Kritik?* (Frankfurt a.M., Germany: Suhrkamp, 2013), 247-265, at 255; cf. Koopman, *Genealogy as Critique*, 103.

⁸⁴ Koopman, *Genealogy as Critique*, 108; cf. Koopman, Matza, “Putting Foucault to Work,” 827.

through which being offers itself to be, necessarily, thought and the *practices* on the basis of which these problematizations are formed.”⁸⁵ Practices may concatenate into problematizations, by which they are conditioned and which, in turn, they condition. Therefore, while we will not be able to make sense of either practices or problematizations in isolation, we can attempt to understand the coming about of one of them in terms of the coming about of the other. Koopman elaborates this point well: as problematizations “act as a kind of hinge by way of which we transition out of old practices and into new ones,” we can “treat problematizations as that by virtue of which we are able to understand the emergence and recession of present practices”; vice versa, we can grasp practices “as emerging in and through problematizations and the reconstructive responses provoked by these problematizations.”⁸⁶ This means that “[t]he units of analytical significance for the genealogist are neither micro- (smallest) nor macro- (biggest) realities, but are rather practices (smaller) and problematizations (bigger).”⁸⁷ It also means that as an act of problematization, genealogy is, in Foucault’s words, “a theoretical practice, if you will. It’s not a theory, but rather a way of theorizing practice.”⁸⁸

For the purposes of this thesis, what I am particularly interested in with regard to the problematization of war are knowledge practices and the contexts in which these arise: I study the practices and institutional forms through which war becomes an epistemic and hence actionable object. In this, I take my cue from Duncan Bell’s proposal to understand knowledge practices as

⁸⁵ Foucault, *The Use of Pleasure*, 11, italics in original. Foucault then recasts his earlier works in the terminology of practices and problematizations: “There was the problematization of madness and illness arising out of social and medical practices, and defining a certain pattern of ‘normalization’; a problematization of life, language, and labor in discursive practices that conformed to certain ‘epistemic’ rules; and a problematization of crime and criminal behavior emerging from certain punitive practices conforming to a ‘disciplinary’ model. And now I would like to show how, in classical antiquity, sexual activity and sexual pleasures were problematized through practices of the self, bringing into play the criteria of an ‘aesthetics of existence’” (*ibid.*: 12). Cf. Michel Foucault, “Questions of Method,” in Michel Foucault, *Essential Works, Volume 3: Power*, Edited by James Faubion, Translated by Robert Hurley et al. (London, UK: Penguin Books, 1994), 223–238, at 229ff.

⁸⁶ Koopman, *Genealogy as Critique*, 101.

⁸⁷ *Ibid.*, 108.

⁸⁸ Foucault, “Power, Moral Value,” 12.

“articulations of thinking, and of claims to valid knowledge, encompassing (indeed demarcating) both ‘empirical’ and ‘theoretical’ domains. This includes theories, arguments, conceptual schemes, specialized vocabularies, political ideologies and policy prescriptions, as well as the numerous ways in which knowledge is constructed and validated, expertise assigned and intellectual legitimacy distributed.”⁸⁹

Moreover, Bell argues that knowledge practices ought to be analyzed in conjunction with the “institutions, networks, organizational structures” from and in which they emerge, and “in which knowledge is fertilized, rendered intelligible and disseminated.”⁹⁰ As suggested by Bell’s conceptualization of knowledge practices, in my work with primary sources I look at everything that was done to make war an epistemic object: at methods or tools for gathering and analyzing data, at procedures for evaluating knowledge claims and distributing knowledge, at the theories and philosophies (of knowledge and of war) on which these tools and procedures rested, and at the ways of knowing into which these different practices coalesced.⁹¹ I also look at different institutional forms in which knowledge about war was produced, specifically at the commission of inquiry and the criminal trial. Finally, to make good on the suggestion to study practices through problematizations and problematizations through practices, in the historical chapters to follow I analyze knowledge practices and the institutional forms in which they occurred as interlinked with what I have referred to earlier as formulations of the problem of war.

⁸⁹ Bell, “Writing the World,” 12. Bell is at best a sceptical Foucauldian (*ibid*, fn. 40.), yet his definition of knowledge practices fits the general understanding of practices proposed by Foucault very well.

⁹⁰ Bell, “Writing the World,” 12. For an alternative definition of “epistemic practices” and the “nodal points” at which they come to the fore, derived from Science and Technology Studies, cf. Bueger, “Making Things Known.”

⁹¹ My initial understanding of the term “ways of knowing” came from one of the textbooks by means of which I was introduced to methodology in the social sciences (Jonathon W. Moses, Torbjorn Knutsen, *Ways of Knowing: Competing Methodologies in Social and Political Research* (London, UK: Palgrave Macmillan, 2007)). It has also taken some inspiration from Hacking’s “styles of reasoning” – although I am very sceptical about Hacking’s ambition to offer an exhaustive account of a progressive history of ways of knowing (cf. Ian Hacking, “Language, Truth and Reason,” in Martin Hollis, Steven Lukes (eds.), *Rationality and Relativism* (Oxford, UK: Blackwell, 1980), 48–66; cf. Ian Hacking, “‘Language, Truth and Reason’ 30 years later,” *Studies in History and Philosophy of Science* 43, no. 4 (2012), 599–609).

Co-production

To think about the relationship between different analytical elements, for instance between practices and problematizations, I rely on the concept of “co-production.” In *Discipline and Punish*, Foucault undertakes to conceive of relations between different analytical elements in terms of “production,” so to

“abandon the belief that [...] the renunciation of power is one of the conditions of knowledge. We should admit rather that power produces knowledge (and not simply by encouraging it because it serves power or by applying it because it is useful); that power and knowledge directly imply one another.”⁹²

Faced with a multiplicity of emergent research objects which are ultimately always causally overdetermined, Foucault’s “coproductionist” approach offers a way of focusing the historical analysis and at the same time carries a specific critical intention.⁹³

Genealogists⁹⁴ and social scientists more generally⁹⁵ have widely taken up the idea of co-production, yet what is still relatively under-appreciated is how exactly this notion can enable critique.⁹⁶ Indeed, because of Foucault’s anti-teleological stance on history and his emphasis on the causal roles of accidents and happenstances, many genealogists limit themselves to showing that things which are usually taken for granted are in fact historically malleable, thus opening them to interruptive critique.⁹⁷ However, and as argued in the previous section, genealogy can also amount to a more (re-)constructive kind of critique: by focusing not on the mere fact of historical emergence, but instead on the processes of which this fact is comprised, genealogy can

⁹² Foucault, *Discipline and Punish*, 27. Cf. Foucault, *Truth and the Juridical Forms*, 32.

⁹³ Cf. Koopman, *Genealogy as Critique*, 35f.

⁹⁴ For instance, cf. Bartelson, *Genealogy of Sovereignty*, 5, 80f.

⁹⁵ For instance, Sheila Jasanoff actuates “co-production” for Science and Technology Studies, proposing it as “shorthand for the proposition that the ways in which we know and represent the world (both nature and society) are inseparable from the ways in which we choose to live in it” (Sheila Jasanoff, “The Idiom of Co-Production,” in Sheila Jasanoff (ed.), *States of Knowledge: The Co-Production of Science and Social Order* (London, UK: Routledge, 2004), 1-12, at 2).

⁹⁶ Cf. Koopman, *Genealogy as Critique*, 140f.

⁹⁷ For examples of this kind of argument within IR, cf. Bonditti et al., “Genealogy,” 163f.; Price, *Chemical Weapons Taboo*, 86.

provide the empirical materials we need to work on our problematizations, our practices, and ourselves.⁹⁸ The concept of co-production, by directing our attention to the manifold productive relations between different analytical elements and by linking this take on causality to a specific critical purpose, can help to realize this analytical aim. Or at least, this is what the example of Foucault's own successive analyses suggests, as Foucault's critical insights into power and knowledge, enabled by the notion of "production," first made him enlarge archaeology into genealogy and later led him to take up work on a different kind of ethics.⁹⁹

To my mind, this thesis contains at least three co-productive relationships between different analytical elements. First, there are several relationships between problematizations and knowledge practices. For one, as an inquiry into the problem of war, the thesis focuses on the *relationship between how war has been formulated as a problem and how it has been made into an object of knowledge*. Secondly, as an inquiry into genealogy, the thesis is also curious about the *relationship between my formulation of the problems my research addresses and the practices through which I conduct this research*. Finally, there is the co-productive *relationship between these two strands or aspects of my research*. By allowing me to treat these two strands of the thesis as on par with each other, the concept of co-production has helped me to develop a reflexive dimension to the research which does not depend on my ways of knowing being somehow less problematic than the ways of knowing I analyze.¹⁰⁰

⁹⁸ Cf. Koopman, *Genealogy as Critique*, 140ff. Koopman puts it very well: "Contingency was for Foucault not a point of conclusion, but a point of commencement: we do not demonstrate contingency as the result of our inquiry, but we inquire to investigate the specific events that have constituted the contingent form into which we are inquiring" (*ibid*, 141).

⁹⁹ I prefer to speak of "co-production" rather than "co-constitution" not only because "co-constitution" emphasizes the stability of historical objects (cf. Aradau, Huysmans, "Critical methods in IR," 604), but also because "co-production" associates the historical insight into the made nature of objects with a call to get to work on their transformation – and hence constitutes an anti-thesis to the notion of "co-constitution."

¹⁰⁰ This notion of reflexivity goes beyond the constructivist/pragmatist assumption of a "double hermeneutic" according to which "not only do observers rely on first-hand interpretation, but their interpretation, in turn, can itself have a feedback effect on the former" (Guzzini, "A Reconstruction of Constructivism," 162). Instead, I try to account for the relationship between myself as a (social scientific) knower, my objects of analysis, and the knowledges (and knowers) that inform my analysis

This leads me to a final point about the concept of co-production: it captures not only the relationships between the different analytical elements, but also allows the analysis to branch out and include other co-produced entities. Most notably, the concept enables an analysis of the production of subjects. In *Truth and the Juridical Forms*, for instance, Foucault asks “how social practices may engender domains of knowledge that not only bring new objects, new concepts, and new techniques to light, but also give rise to totally new forms of subjects and subjects of knowledge.”¹⁰¹ Following Foucault, from the relationship between practices and problematizations arise not only objects, but also subjects.¹⁰² It is along these lines that my research tries to gain insight into the formation of subjects: specifically, the thesis’ historical chapters look at how the problematization of war in international politics produces hierarchies of epistemologically and politically capable subjects.

Critical praxis

In order to develop the findings shed by my inquiry into problematizations, practices, and co-productions into the direction of critique, I draw on the notion of “critical praxis.” Previously, I have argued that genealogy as problematization, rather than denouncing its objects as bad or wrong, seeks to clarify and intensify them and to thereby make them into bases for the elaboration of thought. Here, I want to elaborate on this by thinking through critique – in line with my understanding of knowledge practices spelled out above – not (only) as thought, but also as practice. In *What is Enlightenment?*, Foucault describes genealogical critique as an attempt to “separate out, from the contingency that has made us what we are, the possibility of no longer

without assuming for myself a superior observational and interpretive faculty (cf. Robbie Shilliam, “‘Open the Gates Mek We Repatriate’: Caribbean Slavery, Constructivism, and Hermeneutic Tensions,” *International Theory* 6, no. 2 (2014), 349-372).

¹⁰¹ Foucault, “Truth and the Juridical Forms,” 2. Foucault later undertook a more discernible “theoretical shift” to study the subject by looking “for the forms and modalities of the relation to self by which the individual constitutes and recognizes himself qua subject” (Foucault, *The Use of Pleasure*, 6).

¹⁰² Cf. Allan, “From Subjects to Objects,” 14.

being, doing, or thinking what we are, do, or think.”¹⁰³ Critique, then, becomes an “attitude” or an “ethos” which is “at one and the same time the historical analysis of the limits imposed on us and an experiment with the possibility of going beyond them.”¹⁰⁴ Taking up this line of thought, I argue that there are two interrelated aspects to critique. On the one hand, it probes the preconditions of our ways of knowing and being. On the other hand, it also experiments with these ways, or rather, with the practices of which these ways are comprised. In order to distinguish this specific idea of critique as practical doings from the more general notion of practice specified above, I speak of “critical praxis.”

As regards the idea of critical praxis as the probing of preconditions, I take my bearings from Butler’s demand “to rethink critique as a practice in which we pose the question of the limits of our most sure ways of knowing.”¹⁰⁵ As “certain kinds of practices which are designed to handle certain kinds of problems produce, over time, a settled domain of ontology as their consequence,” Butler argues, “this ontological domain, in turn, constrains our understanding of what is possible.”¹⁰⁶ Our “ontological horizon,” as Butler calls it, is produced as much by what lies within it as by what lies without it – it is constituted both by what it includes and by what it excludes.¹⁰⁷ Hence, probing the preconditions of our ways of knowing and being means to seek out the composition as well as the blindspots and limitations of our contemporary problematizations, and the constraints these problematizations place on our political imaginaries.

For the purpose of the twofold critique proposed by this thesis – a critique of how we presently treat war as a problem, and of how we conduct genealogy as a method – my aim is, in particular, to question the preconditions of our present ways of knowing.

¹⁰³ Michel Foucault, “What is Enlightenment?,” in Michel Foucault, *Essential Works, Volume 1: Ethics, Subjectivity, and Truth*, Edited by Paul Rabinow, Translated by Robert Hurley et al. (New York, NY: New Press, 1997 [1994]), 303-320, at 315f.

¹⁰⁴ *Ibid.*, 319.

¹⁰⁵ Butler, “What is Critique?,” 215.

¹⁰⁶ *Ibid.*, 216.

¹⁰⁷ For a similar usage of the term “inclusions and exclusions,” cf. Patrica Owens, “Decolonizing Civil War,” *Critical Analysis of Law* 4, no. 2 (2017), 160-169, at 162.

For example, many of our formulations of war as a problem depend on the existence of knowing and acting subjects who are capable of recognizing and addressing the problem of war precisely insofar as they are situated to the outside of it, thus limiting how we can imagine our entanglement with war and how we can therefore act upon it. Not dissimilarly, the use of genealogy as a method, i.e., as a tool which is first specified and then applied in our engagement with the world, presumes that our practices of knowing are somehow not part of the world that we analyze and seek to change, thus excluding these practices from the analytical and political scope of our inquiries. It is these kinds of insights into the constitutive inclusions and exclusions of our contemporary problematizations which offer us the materials for getting to work on changing the horizons of our imaginaries by experimenting with our practices.

For experimenting with our practices is, I suggest, the second aspect of genealogy as a critical praxis. To make this argument, I once more take my cue from Koopman, who proposes that “Foucault did not aim only to historically problematize our present, for his aim was to problematize our present so to reveal conditions we must work on to experimentally create an improved future.”¹⁰⁸ However, whereas Koopman merely suggests that genealogy provides us with the “tools” and “materials” we need to get to work on our practices and problematizations¹⁰⁹, in this thesis I try to take things one step further and hence to use the historical insights shed by the genealogical analysis to experiment with my own knowledge practices. The intention behind this experimentation is not, or at least not first and foremost, to live up to genealogy’s reputation as a “playful” and “improvised” kind of analysis.¹¹⁰ Although there is an element of playfulness to it, the experimentation I engage in in this thesis is above all an attempt to redo, in a systematic manner, some of the knowledge practices which

¹⁰⁸ Koopman, *Genealogy as Critique*, 139. On the idea of Foucauldian genealogy as experimentation, cf. Gilles Deleuze, “A Portrait of Foucault,” in Gilles Deleuze, *Negotiations 1972-1990*, Translated by Martin Joughin (New York, NY: Columbia University Press, 1995 (1986)), 102-118, at 106.

¹⁰⁹ Koopman, *Genealogy as Critique*, 130, 143. Koopman is clear that he does not himself engage in the work of changing practices (cf. *ibid*, 27).

¹¹⁰ Felix Berenskoetter, “Approaches to Concept Analysis,” *Millennium: Journal of International Studies* 45, no. 2 (2017), 151-173, at 169f.

my historical analysis identifies as playing an important role within the emergence of the problem of war in international politics. My experimentation loosely follows Bartelson's notion, explicated in Chapter 1, of genealogy as a mode of writing that *in practice* situates itself inside the history it is studying. Similarly loosely, it also follows the example of Koskenniemi's *Gentle Civilizer of Nations*, which, as the author argues, constitutes "a kind of experimentation in the writing about the [...] past in which the constraints of any rigorous 'method' have been set aside" in order to provide an historical analysis "that hopes to make our present situation clearer to us and to sharpen our ability to act [...] as we engage in our practices and projects. In this sense, it is also a political act."¹¹¹ Not least since Koskenniemi's work is explicitly inspired by Foucauldian genealogy¹¹², one way of reading the *Gentle Civilizer* is as an experiment with disciplinary practices of writing which in its experimentation is informed by the historical analysis of international law also presented in the book. Looking to these examples to find my own way, in the chapters to follow I experiment with several disciplinary knowledge practices: with practices of thinking, of looking, and of writing.

Genealogy, in Foucault's words, is "a historico-practical test of the limits we may go beyond, and thus a work carried out by ourselves upon ourselves."¹¹³ In this spirit, the critical praxis to which this thesis aspires, the probing of preconditions and the experimentation with practices, is hoped to both provide us with the materials to get to work on our practices and problematizations and to begin this difficult work, albeit in a small way. In addition to a clarification and intensification of the problematization of war in international politics, the thesis thus also constitutes an encounter between an object of inquiry, a subject of knowledge and a bundle of epistemic practices – an encounter, moreover, from which all emerge altered. How this encounter has been set up is what I discuss in the chapter's next section.

¹¹¹ Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870-1960* (Cambridge, UK: Cambridge University Press, 2010 [2001]), at 9f.

¹¹² Cf. Koskenniemi, *Gentle Civilizer*, 9.

¹¹³ Foucault, "What is Enlightenment?," 47.

Towards a genealogical praxis

The previous sections have come at genealogy from various angles. First, by putting genealogy in context, I have probed it as a particular kind of history and a particular kind of critique. Next, I have discussed how the concept of “problematization,” together with a number of ancillary concepts, makes sense of genealogy’s objects as well as of genealogy itself. In this third and final section, I want to begin to move this discussion towards the critical praxis which the previous section has explicated in the abstract. To this end, I explain a number of crucial decisions that I have taken over the course of the research process – decisions concerning the historical period and the empirical examples to focus on, the kinds of primary sources to use, and my approach to and practices for collecting and analyzing these sources. The section concludes with a brief preview of my attempt at challenging these practices.

The genealogy presented in this thesis focuses on one period of time only and on multiple examples of emergences within it. This approach differs from the majority of genealogical treatises in IR. Most commonly, genealogies in IR have studied a number of successive historical periods in order to produce evidence and statements about the “identifiable regularity” of their research objects within those periods.¹¹⁴ However, the historical interest of this thesis lies with an emergence rather than with a state of affairs, or with war’s *becoming* rather than with its *being* a problem. As Bonditti and colleagues put it, “the event of emergence is a distributed one.”¹¹⁵ In order to make sense of my research object as a dispersedly emergent one, I therefore focus on a single instance of what Neumann calls “the problem-solving period” or “the break in [a] phenomenon’s social existence.”¹¹⁶

For the “phenomenon” of war, I argue, one particularly interesting and relevant “problem-solving period” lasted roughly from the mid-19th to the mid-20th century: it

¹¹⁴ Bartelson, *Genealogy of Sovereignty*, 86; for a similar approach, cf. Der Derian, *On Diplomacy*.

¹¹⁵ Bonditti et al., “Genealogy,” 163.

¹¹⁶ Neumann, “Post-Structuralists also Have a Duty,” 14.

was during this time that war became a practically actionable and empirically knowable thing. As to the first of these two emergences, scholars disagree about its exact starting point. Ceadel's and Durand's respective analyses of the history of Western European peace societies suggest that the idea of war as a problem which can be addressed by human action already began to take its course in the aftermath of the Napoleonic Wars.¹¹⁷ By contrast, Weinke locates the emergence of the idea that war was a problem of concern not only to states, but also to civil society in the second half of the 19th century.¹¹⁸ In any case, the development of the peace movement over the course of the 19th century entails, as Bell points out, that at the end of the century, "[f]or the first time in history, it was widely believed that war could be eliminated through concerted human action."¹¹⁹ It is to this particular debut of war as a problem against which non-state actors could take practical action that my thesis attends.

Yet while an awareness of war as an actionable problem might have begun to emerge as early as the late 18th century, it was only during the second half the 19th century that war began to be understood as an object of empirical knowledge. In the beginning of the century, as Durand explains, "[w]ar was regarded as a distortion of human nature [...] which could be cured by a return to reason," and the early peace societies' "pacifist propaganda was still inspired by idealistic considerations."¹²⁰ In Durand's somewhat curious wording, "[t]he objective study of war as a phenomenon [...] had not yet been invented."¹²¹ From about the mid-19th century onwards, however, and in the more general context of the emergence of empirically-based social science¹²² and criminal

¹¹⁷ Ceadel, *Origins of War Prevention*, ch. 1; Durand, "Moynier and the Peace Societies." A similar timeline is suggested by Michael Howard, who contends that the idea of an international order free from war "has been regarded by political leaders as a practicable or indeed desirable goal only during the past two hundred years" (Michael Howard, *The Invention of Peace and the Reinvention of War* (London, UK: Profile Books, 2002), at 2).

¹¹⁸ Weinke, *Gewalt, Geschichte, Gerechtigkeit*, 10.

¹¹⁹ Duncan Bell, "Before the democratic peace: Racial utopianism, empire and the abolition of war," *European Journal of International Relations* 20, no. 3 (2014), 647-670, at 650. Cf. Price, *Chemical Weapons Taboo*, 166.

¹²⁰ Durand, "Peace Societies," 535.

¹²¹ *Ibid.*

¹²² Cf. Yanow, "Thinking Interpretively," 8. See also Foucault, *The Will to Knowledge*, 51ff.

law¹²³, war began to become an object that could be known “scientifically,” i.e. empirically and systematically. This, therefore, makes for the approximate moment that I take as the starting point of my historical inquiry.

However, although it became in principle possible to think of war as an object of empirical knowledge and practical action during the second half of the 19th century, many of the elements that we today associate with the problem of war only emerged at later moments in time. As but one example, consider the idea that the death of soldiers in war is problematic. As Zambarnardi shows, in the aftermaths of the US Civil War, the Franco-German War, and the First World War, combatant deaths for the first time took on a social meaning. However, while they signified heroic and nationalistic sacrifices, they were not yet the indefensible losses as which we know them today (at least insofar as it is soldiers from “our” societies who are killed in war).¹²⁴ This latter kind of signification of combatant deaths only began to become conceivable after the Second World War. And this is not yet to say anything about the idea that the death of civilians in war is part of the problem at stake, nor of the many other aspects that make up the problem of war as we know it today. To enable the analysis to capture the emergence of at least some of these different aspects – without, however, hypothesizing in advance precisely what these aspects would be – I decided to study empirical materials spanning from the aftermath of the Franco-German War to the aftermath of the Second World War.

To pin down more precisely what I would look at, I resolved to focus on a number of examples of initiatives that sought to do something against war by producing empirical knowledge about it. Specifically, I looked for international and post-war

¹²³ Cf. Nicola Lacey, “In Search of the Responsible Subject: History, Philosophy and Social Sciences in Criminal Law Theory,” *Modern Law Review* 64, no. 3 (2001), 350-371; Alan Norrie, *Crime, Reason and History: A Critical Introduction to Criminal Law*, 3rd ed. (Cambridge, UK: Cambridge University Press, 2014).

¹²⁴ Lorenzo Zambarnardi, “Excavating Soldier Deaths: A Study of Changing Burial Practices,” *International Political Sociology* 11, no. 3 (2017), 292-307, at 294. Cf. Maja Zehfuss, “Hierarchies of Grief and the Possibility of War: Remembering UK Fatalities in Iraq,” *Millennium: Journal of International Studies* 38, no. 2 (2009), 1-22.

endeavours at knowing and addressing war – though the initiatives I ended up studying differed in what it meant for them to be “international” and “post-war.” Moreover, since I did not want to unquestioningly take IR’s (or, for that matter, any other discipline’s) dealing with war as my point of departure, I chose to study initiatives undertaken by actors whom we might today think of as “practitioners,” yet who in their own times, in which the boundaries between scholarship and practice, insofar as they were drawn at all, were not yet drawn in the same way as today, often combined scholarly and practical-political roles.¹²⁵ Finally, and as mentioned above, my particular interest was in how war became a problem against which non-state actors could take action, and I chose examples accordingly.

As to the logic of selecting examples to be studied, I did not choose initiatives for their representativeness, with a view to drawing more general inferences about a larger universe of cases. Nor did I intend to focus on the key points in the emergence of the problem of war – in fact, I often deliberately looked for the becoming of the problem of war in places and moments that are not often considered in IR analyses. The distributed nature of the emergence of problems, the understanding of history as contingent and haphazard, and the assumption that genealogy is inextricably part of the histories it studies and writes mean that neither representativeness nor centrality are of central concern for genealogical research.¹²⁶ Instead, Foucault suggests that genealogies are constructed from “discreet and apparently insignificant truths.”¹²⁷ In this spirit, I chose different initiatives as examples of what the problematization of war in international politics had looked like in the past, so to be able to examine the different forms, shapes, and guises in which war emerged into a problem, to probe the historically constituted preconditions of our contemporary ways of thinking about and taking action against war, and to hopefully produce materials for enabling the

¹²⁵ For instance, of the members of the Balkan Commission whose work I analyze in Chapter 3, Justin Godart and Paul Milioukoff had both academic and political roles, and Gustave Rolin-Jaequemyns, whose writings I study in Chapter 4, was both an international lawyer (at a time when this role was not yet clearly defined) and a politician.

¹²⁶ Cf. Bartelson, *Genealogy of Sovereignty*, ch. 3.

¹²⁷ Foucault, “Nietzsche, Genealogy, History,” 77.

experimentation with these ways.

In the order of appearance within the thesis, the first example I study, in Chapter 3, is the so-called “Balkan Commission” which, sponsored by the Carnegie Endowment for International Peace (CEIP), inquired into the Balkan Wars of 1912 and 1913. Insofar as the commission is known among scholars of IR, it is seen as an example within the history of the concept of civilization which gained renewed prominence when, in 1993, the CEIP reissued the commission’s report as a historical commentary on the ongoing wars in Yugoslavia.¹²⁸ By contrast, my interest in the commission’s work was originally sparked because some of the extant secondary literature in international law mentioned it as an example of a truth commission *avant la lettre*¹²⁹, and also because the commission understood itself as an attempt to produce a “scientific” study of the phenomenon of war in order to contribute to war’s elimination. My engagement with the available archival sources pertaining to the commission’s work turned out to be crucial in figuring out my project’s focus on the problem of war: for among many other things, these sources discuss, both explicitly and in-between the lines, the question of how war should be framed. Was war a legal, an economic, a moral problem? Or was it not a problem so much as a way of progressing in history?

From the manifold leads offered by the analysis of the Balkan Commission’s work, in the following two chapters I decided to focus on formulations of war as a legal problem – not least because the commission itself had sidelined this formulation. To this end, Chapter 4 studies two ultimately unsuccessful attempts at devising an international criminal institution: a debate, in the aftermath of the Franco-German War, between international jurists hailing from Belgium, France, and Germany; and another debate, in the aftermath of the First World War, held by the so-called Advisory Committee of Jurists (in which leading voices came from Belgium, France, the United States, and Japan). Initially, one main reason for my interest in the legal debates surrounding the

¹²⁸ Cf. Hansen, *Security as Practice*, 90; Maria Todorova, *Imagining the Balkans*, updated ed. (Oxford, UK: Oxford University Press, 2009 [1997]), 4ff.

¹²⁹ Cf. Michael P. Scharf, “The Case for a Permanent International Truth Commission,” *Duke Journal of Comparative and International Law* 7 (1997), 375-410, at 377.

Franco-German War was the empiricist stance which the secondary literature attributes to international lawyers of the mid- to late nineteenth century, casting them as “amateur sociologists”¹³⁰ and highlighting how they “[took] pride in the strength of their grip on reality.”¹³¹ Incidentally, the debate following the Franco-German War also featured the earliest formulation that I could find of an idea for retrospectively producing knowledge about war in order to address some of war’s problematic aspects.¹³² Meanwhile, the secondary literature suggests that by the time of the Advisory Committee of Jurists, international law’s epistemological principles and epistemic practices had changed.¹³³ In addition, a first glance at the primary sources offered the committee’s proposition that an international criminal tribunal would have a “considerable preventative effect” on war.¹³⁴ Finally, I was keen to follow up on the example of the Balkan Commission with an analysis of reactions to distinctly “European” wars – which is not to suggest that the First World War was not fought and felt globally, but rather that I was interested in seeing reactions to wars that could not so easily be made sense of by the kind of “civilizational” reasoning that underlay much of the Balkan Commission’s work.

In Chapter 5, to look more closely at war as crime, I turn my attention to the post-Second World War International Military Tribunals (IMTs). While my initial interest in the IMTs was, once more, aroused by the secondary literature’s interpretation of these tribunals as early example of transitional justice¹³⁵, the chapter ended up counteracting precisely this idea. Instead, I studied the IMTs as an instance within the genealogy of the problematization of war in international politics – as the first time that war received a fully-fledged treatment as a particular kind of legal problem,

¹³⁰ Koskeniemi, *Gentle Civilizer*, 97f.

¹³¹ Neff, *War and Law*, 197.

¹³² Daniel Marc Segesser, *Recht statt Rache oder Rache statt Recht? Die Ahndung von Kriegsverbrechen in der internationalen fachwissenschaftlichen Debatte 1872-1945* (Paderborn, Germany: Verlag Ferdinand Schöningh, 2007), at 89, fn. 70.

¹³³ Cf. Koskeniemi, *Gentle Civilizer*; Neff, *War and Law*.

¹³⁴ Advisory Committee of Jurists, *Procès-Verbaux of the Proceedings of the Committee, June 16th-July 24th 1920, with Annexes* (The Hague, The Netherlands: Van Langenhuisen, 1920), at 498.

¹³⁵ Indicatively, Teitel, “Transitional Justice Genealogy.”

namely an international crime, and as an instance featuring several novel practices for retrospectively knowing war. For this chapter, I decided to focus the analysis on the three dissents issued by the French, Dutch, and Indian judges on the bench of the International Military Tribunal for the Far East (IMTFE) in Tokyo. Dipping into the primary sources and the secondary literature, it struck me that these three judges had distinctive understandings of the international order, of war, and of legal (and other) ways of knowing. To follow up on the “civilizational” reasoning that played such distinct roles in the examples covered by previous chapters, it was especially interesting to see how the Indian judge made sense of these matters and how his colleagues criticized his points of view.

Insofar as all of the historical examples I study are composed partly or wholly of international jurists, this is because for much of the period under study, jurists were amongst the most active in the business of wondering about how one could produce empirical knowledge about war in order to delimit, prevent, or even eradicate entirely this gruesome phenomenon. Historians were usually preoccupied with wars dating back many centuries, and would-be scholars of international politics had, for much of the time under study, yet to witness the “birth” of their discipline. Moreover, as Aalberts and Golder remind us, “from a Foucauldian perspective, law is not the vis-à-vis of power, [...] but in fact a form of power itself that produces a truth regime through legal knowledge claims.”¹³⁶ From this perspective, studying the ideas and practices of international jurists is but one particular way of studying knowledge and its history in international politics. Finally, while this focus on international law did mean that I often found myself studying ways of knowing and being that were wholly unfamiliar to me, these seemingly strange ways are, at least if we take seriously the argument that 19th-century international jurists were “amateur sociologists,” precursors to our contemporary ways of knowing war. And as our contemporary ways

¹³⁶ Tanja Aalberts, Ben Golder, “On the Uses of Foucault for International Law,” *Leiden Journal of International Law* 25, no. 3 (2012), 603-608, at 608.

might be more legally shot through than we (non-jurists) would like to believe¹³⁷, it will be helpful to have insight into their historical constitution.

To study these scattered emergences of the problem of war, I draw on different kinds of primary sources. I collected materials from archives both physical and digital, and I also collected articles, reports, opinion pieces, and other kinds of published texts. Many of these materials are what Foucault once referred to as “‘prescriptive’” or “‘practical’” rather than “theoretical” texts: “texts written for the purpose of offering rules, opinions, and advice,” and moreover texts “which are themselves objects of a ‘practice’ in that they were designed to be read, learned, reflected upon, and tested out.”¹³⁸ For each chapter, I took a deliberate decision on how to delimit the archive of texts I would base my analysis on. Chapter 3, for instance, is based on one “complete” archive: it takes into account all of the records on the Balkan Commission that are available in Columbia University’s Rare Book and Manuscript Library (which holds the pre-1945 archives of the Carnegie Endowment for Peace). Not least for reasons of feasibility, Chapter 5, by contrast, is based almost exclusively on just three primary sources: namely, the dissents of the judges from France, the Netherlands, and India. Chapter 4 falls somewhere in-between these two extremes, yet it has to cope with the added difficulty of handling sources from two distinct moments in time.

Foucault, of course, uses the term “archive” to refer not to a building and the records it stores, but to an order of things and the “*system of its enunciability*”¹³⁹ – a structural focus which, as this chapter has already discussed, was later converted into an analysis of historical emergences. Taking up this line of thought, the aim of my analysis of primary sources is to understand the emergence of war as an epistemic and actionable object. To do this, I follow Stoler’s suggestion to read sources not only “against” but also “*along the archival grain*.”¹⁴⁰ This is an interpretive reading which, rather than

¹³⁷ Cf. Gerry Simpson, *Law, War, and Crime: War Crimes, Trials and the Reinvention of International Law* (Cambridge, UK: Polity Press, 2007).

¹³⁸ Foucault, *The Use of Pleasure*, 12.

¹³⁹ Foucault, *Archaeology of Knowledge*, 129, italics in original; cf. Stoler, *Along the Grain*, 94.

¹⁴⁰ Stoler, *Along the Grain*, 100.

trying to find a meaning lying hidden behind or beneath the texts, tries to make sense of the meaning the texts carry overtly. This is not to say that my reading of the sources blindly follows the archive's categories and classifications – to the contrary, I probe how they were produced and, in turn, how they became productive. Drawing on this reading, I then develop an analytical narrative which, or so I hope, not only offers a history of the problematization of war, but also provides materials for us to get to work on the preconditions of this problematization and on the practices through which it is actuated today.

And yet, my ways of working with primary sources are made up of practices of collecting, reading, thinking, and writing which are not principally different from the knowledge practices I analyze. They are just as fraught, just as potentially problematic, and – if I am to take seriously the idea of genealogy as a way of getting to work on our contemporary problematizations – just as much in need of being changed. However, taking seriously the insights shed by this analysis also means that more than anything, it is my practices that are keeping the project together. How, then, to practice genealogical research without taking this practice for granted?

I work out my answer to this question over the course of the three following chapters. Here, I merely want to issue a brief announcement: what I will try to do is to experiment with – to take up and do differently – three practices that are quite common in our research (not least in IR's research into war and violent conflict). In Chapter 3, I do differently a practice of thinking, namely the practice of formulating working hypotheses. In Chapter 4, I get to work on a practice of writing, namely the practice of developing an overarching narrative into which all of the findings are integrated. In Chapter 5, finally, I turn on two practices of looking: the practice of looking at an archive in its entirety, and the practice of taking a bird's-eye view to figure out and then focus on the most central aspect of an object, a case, an example under study. Each chapter is followed by a vignette in which I explain and reflect upon this “doing differently.” Instead of using genealogy as a method, or as a technical tool to be first specified and then wielded onto the material, I thereby in part construct what it

practically means to do a genealogy during the process of the research. The practice of thinking with which I experiment in Chapter 3 is one that, in an afterthought to the “methods training” that I underwent during previous studies, I had already been wondering about prior to commencing this project. The practices of writing and of looking on which the following two chapters turn, however, are practices about which I began to think during my work on Chapter 3 – which deals, amongst many other things, with how the Balkan Commission invented practices of direct observation and of report-writing. Through these experimentations, I try to render the knowledge practices of which genealogy consists part of the research process, and thereby to turn to good account genealogy’s insight into the historical and emergent nature of our ways of knowing.

Doing genealogy as becoming curious

The purpose of this chapter has been to report and reflect on the actions my thinking about genealogy and about the problem of war has taken *en route* to being. As a first step, I have discussed my reading of Foucauldian genealogy in contrast to archaeology as well as to Nietzschean genealogy. This reading has arrived at an understanding of genealogy as a kind of history which inquires into processes of emergence and which, to this end, has at least two research foci, as well as at an understanding of genealogy as critique which, digesting a large amount of empirical materials, aims to analyze the coming-about of our contemporary ways of being, knowing, and doing in order to render these ways changeable. Next, I have proposed a number of concepts through which to conduct genealogy as this kind of history/critique. Centrally, I have discussed the idea of “problematization,” referring to the process of the becoming of a problem, as a way to make sense both of genealogy’s research objects and of genealogy itself. In addition, I have suggested the notions of “practice,” “co-production,” and “critical praxis” as ancillary concepts to account for, respectively, the stuff of which problematizations are assembled, the relationships between different analytical elements, and the (re-)constructive, probing, and practical critique that this genealogy

aspires to. Finally, I have provided an overview of how I went about this critical genealogical praxis. In this regard, I have pointed out and explained my decisions as to the period of time under study, the choice of examples of study, the choice of sources and the delimitation of the archive, and the approach to and practices for collecting and analyzing these sources. I have ended this discussion with a short preview of how, in the following chapters, I will attempt to experiment with and “do differently” some of these practices. This experimentation, together with the work done by the concept of problematization and its ancillaries, is my answer to the question of how to “put genealogy as a critical stance into motion alongside the empirical material.”¹⁴¹ It is my suggestion for making good on the specific notion of history/critique proposed by Foucault’s genealogical work, as well as my proposal for how we could do our knowing – our methods and methodologies – in an historically reflective and thereby critically conscious way.

None of this is meant to imply that this is the only possible way of conducting a historical critique. I do not want to suggest that the way in which the genealogy offered in this thesis proceeds is the only valid approach to genealogy; quite to the contrary, in reading others’ genealogical treatises, I have been struck by the variety of ways of doing genealogy, and I have come to believe that one of the strengths of genealogy is that each genealogical project must find its own way of conducting itself. Nor do I more generally wish to argue for genealogy, however specified, as the best or even the only way of doing research that is critically reflexive. In fact, I hope that genealogy and related historical approaches can proceed in conversation with other critical to research, and I will sketch out some possible lines of conversation in the thesis’s conclusion. What I do want to argue, however, is that genealogy as sketched in this chapter and as proposed by this thesis – genealogy as history/critique, problematization, and critical praxis – makes for an insightful and sound way of thinking about, inquiring into, and getting to work on our ways of knowing.

¹⁴¹ Koopman, “Ways of Doing Genealogy.”

Before turning to the first historical example, I would like to momentarily conclude this chapter's various lines of argument by proposing genealogy as a mode of curiosity.¹⁴² "As for what motivated me," Foucault writes, "it is quite simple; I would hope that in the eyes of some people it might be sufficient in itself. It was curiosity."¹⁴³ Taking up this cue, genealogist Simon Gehl contemplates curiosity as a complex approach to inquiring into and extending our epistemological and political imaginaries:

"as much as I find curiosity an invitation, it's also a source of unending frustration. How does one actually do it? How does one become curious? Or practice curiosity? It's not as simple or as romantic as it sounds. [...] curiosity has already been harnessed, directed, primed. [...] To practice curiosity in Foucault's sense would be precisely to work against its institutionalized modes; that is, to combat some patterns and habits with others. But which ones? And why?"¹⁴⁴

To me, this stance on curiosity – the exhilaration and the frustration that comes with genealogy as a critical praxis – offers a very poignant summation of this chapter's discussion. It captures both the unceasing "uncertainty and apprehension"¹⁴⁵ and the rigour¹⁴⁶, both the creativity and the systematicity that genealogy as history/critique, problematization, and critical praxis requires. In this spirit, the next chapters turn to the history of the problematization of war in international politics – starting with an analysis of the Balkan Commission's inquiry into the Balkan Wars of 1912 and 1913.

¹⁴² For related takes on curiosity in IR, cf. Cynthia Enloe, *The Curious Feminist: Searching for Women in a New Age of Empire* (Berkeley, CA: University of California Press, 2004); Cynthia Weber, *Queer International Relations: Sovereignty, Sexuality and the Will to Knowledge* (Oxford, UK: Oxford University Press, 2016), ch. 2. See also Luis Lobo-Guerrero, "Wondering as a Research Attitude," in Mark B. Salter, Can E. Mutlu (eds.), *Research Methods in Critical Security Studies: An Introduction* (London, UK: Routledge), 25-28.

¹⁴³ Foucault, *The Use of Please*, 8. On the "principle of curiosity," cf. Foucault, "Power, Moral Values."

¹⁴⁴ Gehl, cited in Koopman, "Ways of Doing Genealogy."

¹⁴⁵ Foucault, *The Use of Pleasure*, 7.

¹⁴⁶ Cf. Foucault, "Nietzsche, Genealogy, History," 77.

Chapter 3

The problem of war and the will to knowledge: The example of the *Balkan Commission*, ca. 1912-1914

In the late summer of 1913, the Balkan Commission, a group of “men of the highest standing” nominated and sponsored by the Carnegie Endowment for International Peace (CEIP), set out to inquire into the Balkan Wars of 1912 and 1913 and to produce a report which would educate “the civilized world” about the problem of war. The First Balkan War, from October 1912 to May 1913, had pitted the Balkan League, an alliance comprised of Bulgaria, Greece, Montenegro and Serbia, against the Ottoman Empire; the Second Balkan War, from June to July 1913, had been waged between the former members of the Balkan League, and later on also Romania and the Ottoman Empire. Both wars had generated a lot of international interest, as a large number of mostly Western European and US-American journalists and photographers had covered the wars extensively.¹ In reaction to these news stories², Nicholas Murray Butler, the Director of the CEIP’s Division of Intercourse and Education, sent a telegram to Elihu Root, the President of the CEIP:

“Amazing charges of Bulgarian outrages attributed to King of Greece give us great opportunity for prompt action. If you approve I will send notable commission at once to Balkans to ascertain facts and to fix responsibility for prolonging hostilities and commencing outrages.”³

¹ Cf. Dzovinar Kévonian, “L’enquête, le délit, la preuve: Les ‘atrocités’ balkanique de 1912-1913 à l’épreuve du droit de la guerre,” *Le Mouvement Social* 222, no. 1 (2008), 13-40, at 15; Eugene Michail, “Western Attitudes to War in the Balkans and the Shifting Meanings of Violence, 1912-91,” *Journal of Contemporary History* 47, no. 2 (2012), 219-239, at 223.

² Cf. Frances Trix, “Peace-mongering in 1913: The Carnegie International Commission of Inquiry and Its Report on the Balkan Wars,” *First World War Studies* 5, no. 2 (2014), 147-162, at 149.

³ Carnegie Endowment for International Peace, New York and Washington Offices Records, 1910-1954 (Columbia University, Rare Book and Manuscript Library Collection), Vol. 200, Telegram Butler to Root, 19 July 1913.

When Root approved immediately⁴, Butler cabled Paul Henri d'Estournelles de Constant, the head of the CEIP's European Bureau in Paris, to explain that a commission was to "proceed promptly" in order to "fix responsibility" for the "hostilities" and to "report facts concerning alleged atrocities," all in an effort to provide "guidance" for public opinion in "Europe and America."⁵

The commission was constituted under the presidency of d'Estournelle. Including its president, it consisted of eight members, of whom, however, only four travelled to the Balkans: Henry Noel Brailsford, a British journalist; Samuel Train Dutton, a head of school at Columbia University with a legal background; Justin Godart, a French lawyer and politician; and Paul Milioukoff, a Russian historian and member of parliament. While a series of misunderstandings prevented the fifth member, the German law professor Walther Schücking, from joining the commission in Belgrade, two further members, the Austrian law professor Paul Redlich and the British editor of the *Economist*, Francis W. Hirst, never intended to go to the Balkans and only collaborated afterwards.⁶ The four travelling members of the commission left Paris on August 20, 1913, ten days after the Treaty of Bucharest had concluded the Second Balkan War. After stops in Belgrade and Salonika, they parted ways: whereas Brailsford and Dutton stayed in Salonika, Godart and Milioukoff went to Athens, from where Milioukoff soon set off for Constantinople. Thereupon, the commissioners reunited in Sofia and finally returned to Paris on September 28, 1913.⁷ In a meeting with d'Estournelles immediately afterwards, they decided on a structure for the report, on who would author which chapter⁸, and on late November of the same year as the date of

⁴ CEIP Archive, Vol. 200, Telegram Root to Butler, 19 July 1913.

⁵ CEIP Archive, Vol. 200, Telegram Butler to d'Estournelles, 19 July 1913.

⁶ Cf. Kévonian, "L'enquête," 24ff.; Trix, "Peace-mongering in 1913," 150f.

⁷ For detailed accounts of these travels, cf. Kévonian, "L'enquête," 27ff.; Trix, "Peace-mongering in 1913," 151f.

⁸ According to the secondary literature, Milioukoff wrote chapters I, III, IV and V; Brailsford chapter II; Godart chapter VI; and Dutton chapter VII. This is in line with the primary sources I consulted. For a chapter outline with individual author's names, cf. CEIP Archive, Vol. 201, Letter Prudhommeaux to Haskell, 12 February 1914. For the handwritten drafts of the chapters, cf. Carnegie Endowment for International European Center Records, 1911-1940 (Columbia University, Rare Book and Manuscript Library Collection), Boxes 9-11.

publication. Yet this deadline was not met, nor were several later ones – in the end, the report was only published in May 1914.⁹

In this chapter, I take the Balkan Commission and its work as a first example within the genealogy of war's becoming an epistemic and actionable object offered by this thesis. Within this genealogy, the commission makes for a pertinent example insofar as it constituted an international as well as retrospective effort at taking action against war by producing knowledge about it.¹⁰ In the commissioners' understanding, their report was "directed not against one or the other of the belligerents, but against the war in which all have been more or less the victims,"¹¹ and their inquiry overall amounted to "an admirable work of justice, of science and of truth."¹² To analyze this work, the chapter uses different kinds of primary sources. A first key primary source is the published report, which – after a single-paged preface by Butler and a lengthy introduction by d'Estournelles – is composed of seven chapters for which the members of the commission assumed collective authorship.¹³ Furthermore, I also use materials collected from the archives of the CEIP's New York and Washington Offices and from its Centre Européen (European Centre). These materials date from October 1912 to July 1914 and comprise letters, telegrams and personal notes written by staff of the CEIP's New York and Paris offices as well as by members of the commission; correspondence between the CEIP and various interlocutors in the United States and Europe (including the Balkan countries); planning documents and reports; and newspaper clippings.

Within the thesis, this chapter serves a twofold purpose. As the previous chapter has explained, the genealogy conducted by this thesis constitutes a particular kind of history and critique: with the aim of clarifying and intensifying our contemporary

⁹ It was mostly Milioukoff who held up the publication of the report (cf. Trix, "Peace-mongering in 1913," 153).

¹⁰ Cf. Kévonian, "L'enquête," *passim*; Michail, "Western Attitudes," 227; Trix, "Peace-mongering in 1913," 151.

¹¹ CEIP Archive, Vol. 201, D'Estournelles to Butler, 19 February 1914.

¹² CEIP Archive, Vol. 201, D'Estournelles to Butler, 3 March 1914.

¹³ For a summary and critical appraisal of the respective individual chapters, cf. Trix, "Peace-mongering in 1913." For a typology of the kinds of evidence used by the commission, cf. Kévonian, "L'enquête."

problematization of war, I seek to provide historical materials by means of which we can recognize and get to work on our practices of knowing about war as well as on these practices' conditions of possibility; in addition, I also endeavour to undertake this work on our knowledge practices. On the one hand, therefore, the chapter reconstructs how, in the example provided by the Balkan Commission's work, war was rendered into an epistemic and actionable object. To this end, the chapter's first section delineates various formulations of the problem of war: rational formulations of war as a legal, an economic, and a moral problem, as well as dialectical formulations of war as expressive of class conflict and as a driver of progress. The second section attends to the institutional form of the commission of inquiry and to the commission's knowledge practices and ways of knowing. Exploring the spatial and temporal character of the problematization of war, the third section not only scrutinizes the categorization of the Balkan Commission as a post-war initiative, but also probes the assumption of European modernity as a uniquely suitable spatio-temporal location from which to problematize war. Taken together, this reconstruction of how, in the work of the Balkan Commission, war became an object that could be empirically known and practically acted upon yields manifold insights into the different elements of the problematization of war, as well as into these elements' co-production, preconditions, and constitutive exclusions.

On the other hand, the chapter constitutes a methodological experiment. In the preceding chapter, I have argued for methodology as an ongoing process of reflecting about the practice of research while being engrossed in this very practice, and I have also made the case for genealogy as an experimentation with our knowledge practices. Taking up these arguments, in this chapter I experiment with a particular practice of thinking: the practice of formulating working hypotheses. As tools for wagering conjectures about our research objects and for proposing these objects for further examination, working hypotheses are – as I will explain in more detail in the reflective vignette following this chapter – typically a means for keeping our research objects at arm's length. In this chapter, however, I point the practice of formulating working

hypotheses in the opposite direction. At the end of each main section and again in the conclusion, I compile the central findings of my historical analysis into a number of working hypotheses. My aim in providing these hypotheses is to make it both more straightforward and more imperative to take up and use the materials offered by this chapter to get to work on our contemporary problematization of war. Hence, the working hypotheses I offer invite a different kind of conjecture: rather than serving to maintain our distance from our research objects, they seek to push us towards getting to work on changing our knowledge practices and, ultimately, our knowledgeable selves.

Converging and competing formulations of the problem of war

Two days after the telegram to d'Estournelles in which he had first proposed the Balkan Commission, Butler followed up with a letter containing more detailed instructions:

“The chief points to examine and report upon are these: Responsibility for the outbreak of hostilities between the Allies; the truth, or falsity, of the reported outrages, and the responsibility for those outrages that are committed; the moral and economic losses due to this war.”¹⁴

In this early formulation, the problem of war was potentially many-pronged. Butler's concern with “the outbreak of war” suggested that the problem might lie with war *per se*. But war's problematic character also resided in two more specific aspects: in certain kinds of war-time violence (“outrages”), and in the moral and economic consequences or costs of war (“losses”). In this section, I describe how these different possible formulations of the problem of war found expression in the example of the work of the Balkan Commission. I also point out two further formulations which at the time were generally in circulation and which the commission sought to subdue: war as expressive of class struggle, and war as heroic and a driver of progress. In the section's

¹⁴ CEIP Archive, Vol. 200, Letter Butler to d'Estournelles, 21 July 1913.

conclusion, I formulate a first few working hypotheses regarding the constitutive exclusions of the problematization of war in the example under study.

In the international politics of problematizing war of the late nineteenth and early twentieth century, two formulations of the problem were in competition with each other: the problem of war *per se*, and the problem of excessive violence within war. Both formulations can also be found in the source material pertaining to the example of the Balkan Commission. The notion of the problem of war as such attracted only scant sympathy among the CEIP and the commissioners. Some of the correspondence originating from the CEIP's Paris Bureau references "la guerre elle-même" as the problem which the Balkan Commission was to tackle¹⁵, and some of the members of the commission toyed with this idea, too. Godart, for instance, declared the commission's report to be aimed "against war in general."¹⁶ Ultimately, however, the commission found that claiming war *per se* to be problematic would undermine its intention of rendering war a problem that could be addressed by practical means: "If [the commission] discovers that the atrocities were inevitable, inseparable from the condition of war, what an exposure of the powerlessness of civilization!"¹⁷

A focus on certain violent acts within war promised to make for a better addressable problem. The idea that the problem of war consisted in excessive war-time violence is widespread both in the early correspondence of Butler and d'Estournelles¹⁸ and in the final report, whose second and third chapters are dedicated to a detailed description and systematic enumeration of instances of excessive violence – "outrages" or "atrocities" – against civilians.¹⁹ At the same time, the primary sources also betray just

¹⁵ CEIP Archive, Vol. 201, Letter Prudhommeaux to Haskell, 6 January 1914. Cf. CEIP Archive, Vol. 201, Letter d'Estournelles to Butler, 19 February 1914.

¹⁶ CEIP Archive, Vol. 200, L'Humanité, *La mission Carnegie poursuit son enquête*, 9 September 1913.

¹⁷ Carnegie Endowment for International Peace, *Report of the International Commission to Inquire into the Causes and Conduct of the Balkan Wars* (Washington, DC: Carnegie Endowment for International Peace, 1914), at 3.

¹⁸ See, for instance, CEIP Archive, Vol. 200, Letter Butler to Root, 19 July 1913.

¹⁹ This kind of violence included the murder of civilians (CEIP Archive, Vol. 200, Letter Butler to d'Estournelles, 21 July 1913. Cf. CEIP, *Causes and Conduct of the Balkan Wars*, e.g. 72f., 76ff., 103); arson (CEIP Archive, Vol. 200, Letter Butler to d'Estournelles, 21 July 1913. Cf. CEIP, *Causes and Conduct of the Balkan Wars*, e.g. 19, 91, 131, 139); pillage (CEIP, *Causes and Conduct of the Balkan Wars*, e.g. 71, 75,

how hard-won an achievement this way of problematizing war was. A first draft of Godart's chapter of the report, for instance, initially argued that "[t]he devastations were of two kinds, those made necessary by war, [and] those that were irregular," but was then revised to read "[t]he havoc committed was of two kinds, one lawful and the other directed against private property."²⁰ The added emphasis on the actual perpetration of war-time violence (instead of just amounting to a "devastation," it was a "havoc committed") as well as on the distinction between legal and illegal instances of such violence exemplifies the many and minute decisions that went into the commissioners' elaboration of war into a specific kind of legal problem.

The struggle between these two legal formulations of the problem of war – the problem of war as such and the problem of war-time violence – played out with reference to the framework provided by international law. By the time of the Balkan Commission, the various arguments and counter-arguments had been rehearsed so many times that there was a standard repertoire of legal reasoning on which the commissioners and their critics could draw. Thus, one of the commission's critics contended that "[t]here is no *Recht des Unrechts* (no right of unright) [...]. When war is outside the boundary of law, war is 'wrong'. Consequently to try to meliorate warfare is to lose one's time and efforts!"²¹ As a participant of the two Hague Conferences of 1899 and 1907, d'Estournelles had also held this view: "To humanize war seemed to me then a hypocrisy and a satire, leading to its being too easily accepted." However, d'Estournelles had since changed his mind and now believed that "[t]he armies are only instruments in the hands of the governments; and these armies are recruited among the youth of each country. [...] To refuse to humanize war for fear of making it too frequent, is to let the weight of the governments' fault fall upon the soldier."²² The

81, 282); massacres (*ibid*, e.g. 13, 19, 69; cf. CEIP Archive, Vol. 200, D'Estournelles, "Une Mission de la Dotation Carnegie dans les Balkans," 9 September 1913); and rape (CEIP, *Causes and Conduct of the Balkan Wars*, e.g. 34, 75, 99, 103f.).

²⁰ CEIP European Center Records, Box 11, Folder 11.5, Godart, Draft of chapter VI, 9a; cf. CEIP, *Causes and Conduct of the Balkan Wars*, 244.

²¹ CEIP Archive, Vol. 121, Letter Léon Montluc to Butler, 10 December 1914.

²² CEIP, *Causes and Conduct of the Balkan Wars*, 14.

commission overall sided with d'Estournelles. The final report's chapter on questions of international law arising from the Balkan wars weighs the prospects of rendering the opening of hostilities and/or excessive war-time violence into crimes against international law.²³ Ultimately, the report rejects the former and embraces the latter, leading to its famous conclusion that "there is no clause in international law applicable to land war and to the treatment of the wounded, which was not violated, to a greater or lesser extent, by all the belligerents."²⁴

This pointed conclusion notwithstanding, on the whole the Balkan Commission's work emphasised the economic and moral problem of war *over* war's legally problematic dimensions. Butler, for one, had from the outset been "much less interested [...] in the juristic development than in the psychological and ethical development of peoples."²⁵ Hence, when d'Estournelles suggested to Butler that the commission should frame instances of excessive violence as criminal acts²⁶, Butler urged a different framing: "My recommendation would be, to dwell, as much as possible, upon the moral and economic, disasters of the war, and to use the atrocities, when proved, rather as evidences of moral bankruptcy, than as ordinary crimes."²⁷ What did war as a "moral and economic" problem consist in?

²³ See also CEIP Archive, Vol. 200, Letter d'Estournelles to Butler, 15 September 1913. Of course, framing war-time violence as "criminal" was not the only way of rendering it a legal problem – infact, and as Chapter 4 will discuss, other ways of legally problematizing war were far more pervasive during the early decades of the 20th century.

²⁴ CEIP, *Causes and Conduct of the Balkan Wars*, 208. By applying the law stipulated in the Hague Conventions to the Balkan wars, "[t]he Commission has done its duty in contending that in spite of the Hague Conventions, the cruelty and ferocity and the worst outrages remained in the Balkans as the direct heritage of slavery and war" (CEIP, *Causes and Conduct of the Balkan Wars*, 14). What d'Estournelles meant by this was that the legal framework which sought to prevent war through arbitration and adjudication had failed.

²⁵ CEIP Archive, Vol. 200, Letter Butler to d'Estournelles, 29 September 1913.

²⁶ CEIP Archive, Vol. 200, Letter d'Estournelles to Butler, 15 September 1913.

²⁷ CEIP Archive, Vol. 200, Letter Butler to d'Estournelles, 16 September 1913. Earlier mentions of this problem include a proposal by the Délégation Permanente des Sociétés Francaises de la Paix of October 1912, which asks the CEIP to support an inquiry into "the economic and demographic consequences" of the First Balkan War (CEIP Archive, Vol. 198, Letter Prudhommeaux to Haskell, 26 October 1912), as well as a suggestion by Haskell to conduct "an inquiry [...] into the losses of men and of money in the war of the Orient" (CEIP Archive, Vol. 199, Letter Prudhommeaux to Haskell, 29 December 1912).

As the opening line of chapter VI of the final report puts it, “[f]rom the economic point of view, war is a destruction of wealth.”²⁸ The chapter goes on to outline the problem as follows. Already “before war is declared the prospect of conflict between the countries [...] affects the financial situation,” as “[c]redit facilities are restricted; monetary circulation disturbed; production slackened; orders falling off to a marked degree; and an uncertainty prevails which reacts harmfully on trade.” With “the declaration of war and mobilization,” “able bodied men” are drafted, and “work stops in factories and in the fields.” This has negative repercussions for individual households as well as for the national economy. “Not only does the country cease to produce, but it consumes with great expense in the hurry of operations.” Once “the fighting begins,” “[t]housands of human lives are sacrificed,” in particular the lives of those most capable of “fruitful labor.” But the economically destructive nature of war is not limited to the annihilation of human lives: “highly expensive supplies of cannon, gun carriages and arms are ruined,” and “there is destructive bombardment of towns, villages in flames, the harvests stamped down or burned, bridges, the most costly items of a railway, blown up.” “Outrages” against civilians are accompanied by further economic destruction, as “noncombatants have to suffer [...] invasion, excesses and it may be flight, with the loss of their goods.”²⁹ In sum: “Hundreds of thousands of deaths, soldiers crippled, ruin, suffering, hatred and, to crown all, misery and poverty after victory. War results in destruction and poverty in every direction.”³⁰ Of

Moreover, in the report’s preface, Butler rhetorically puts the legal problem of war into its place by assigning it a specific and limited argumentative function. He first asserts that “the persistent rumors [...] as to violations of the laws of war by the several combatants” had been one main reason for the invocation of the commission, and then declared that the purpose of the report was “a contemplation of the individual and national [moral and economic] losses due to war” (CEIP, *Causes and Conduct of the Balkan Wars*, Preface). The author of the report’s final chapter, Dutton, had a less subtle rhetorical approach: “The bearing of international law upon the conduct of war and the treatment of people and of private property by belligerents has already been discussed. It is the *larger* moral question which is here raised” (*ibid.*, 272, my emphasis).

²⁸ CEIP, *Causes and Conduct of the Balkan Wars*, 235. On the economic problems of war, cf. Nadine Akhund, “The Two Carnegie reports: From the Balkan Expedition of 1913 to the Albanian Tip of 1921,” *Balkanologie: Revue d’études pluridisciplinaires* 14, no. 1-2 (2012).

²⁹ CEIP, *Causes and Conduct of the Balkan Wars*, 235. D’Estournelle’s introduction echoes these statements drawn from chapter VI without adding anything new to them (see *ibid.*, 4, 14).

³⁰ *Ibid.*, 264.

this rendition of the economic problem of war, a number of aspects are particularly noteworthy. For one, war was divided into distinct bits of time in which the economy was negatively affected, with an emphasis on moments just before and after the outbreak of war. Furthermore, war was problematic specifically for an economy in which many of the most valuable items were markers of modernity. Finally, the economic dimension of an object seems to have been inherently positive: even in the case of an “expensive” weapon, its destruction was problematic insofar as it amounted to a loss of economic value.

The commission’s consideration of war as a moral problem, in turn, hinged on the notion that excessive war-time violence would yield negative consequences for “the psychological and ethical development of peoples.”³¹ The commission’s concern with the “moral effects of the atrocities” lay with individuals and collectivities, and moreover with “the sufferers as well as those guilty of committing them.”³² For instance, speaking of soldiers who were given orders to commit violence against civilians, the report notes these orders’ “moral effect upon hundreds and thousands of young men” and declares that “the moral loss is irretrievable.”³³ This concern was also applied to the collective level, as the deleterious effect of the “revolting” events of the war was feared to manifest itself “in the inner consciousness of moral deterioration and in the loss of self respect that the nations will chiefly suffer.”³⁴ This formulation of the problem of war is notable not least for its curious combination of normative reasoning with psychology: it fuses the notion that an object, an action, or a state of being could be deemed good, right, or proper with ideas about external stimuli and mental and behavioural responses and applies the resulting amalgamation to both

³¹ CEIP Archive, Vol. 200, Letter Butler to d’Estournelles, 29 September 1913.

³² CEIP, *Causes and Conduct of the Balkan Wars*, 266f.

³³ *Ibid.*, 267.

³⁴ *Ibid.*, 269. Or, for a slightly different formulation: “The most serious difficulty which remains to be overcome, is the state of mind of the population.” By “state of mind,” the author is referring to individuals and collectives whose psychological constitution is free of resentment and mutual hatred, thus allowing for “freedom and toleration”: “we repeat, the condition is ‘autonomy for the religious communities and freedom for the schools,’ — a return, that is to say, to the minimum of liberalism which did up to the last few years exist in fact, guaranteed by international treaties, even in old absolutist Turkey” (*ibid.*, 185f.).

individuals and collectivities. Thereby, war becomes a moral problem not only insofar as certain events within war are of a normatively problematic nature, but more importantly because it has hugely negative “moral” (or, as it would be called today, psychological) consequences. However, in comparison to the detailed and systematic spelling out to which the economic problem of war was treated, the notion of war as a moral problem overall remains quite opaque. While the commissioners seem to have been receptive to concurrent developments in disciplines such as experimental psychology³⁵, they struggled to bring these to bear on the problem of war.

Next to this notion of war as an at once legal, economic, and moral problem, the primary sources pertaining to the Balkan Commission contain two further formulations of the problem of war which, albeit subdued, are traceable between the lines: the Marxist formulation of war as expressive of class struggle, and the Hegelian formulation of war as heroic and a driver of progress.³⁶ As to the idea of war as a problem of class, a letter by Victor Bérard, a member of the French peace movement³⁷, interpreted the Balkan wars as an example of the broader struggle “between the farmer and the exploited slave and the Greek proprietor or exploiter.” The letter’s author felt that the wars “have revived the days of our France between 1570 and 1589 [*sic*]. And the towns of this Balkan [...] have revived the life of our Paris, between March and May 1871.”³⁸ In effect, this understanding of war as an expression of class struggle made war and violence into a smaller part of a larger problem. What is more, it

³⁵ Cf. George Mandler, *A History of Modern Experimental Psychology: From James and Wundt to Cognitive Science* (Cambridge, MA: MIT Press, 2007).

³⁶ The somewhat anachronistic terms “Marxist” and “Hegelian” do not come from the primary sources, but are my own. On the understanding of war in Marxist political theory, cf. Joas, Knöbl, *Kriegsverdrängung*, 11f., 136-143; on Hegel’s “bellicism,” cf. *ibid*, 20, 145-153.

³⁷ Victor Bérard was a French classicist, politician, and member of the International Peace Bureau. Early on, Bérard made known a number of “objections” to the commission’s composition, timing, and objective (cf. CEIP European Center Records, Box 189, Letter D’Estournelles to Butler, 23 July 1913). Nonetheless, D’Estournelles had asked Bérard to join the commission (CEIP Archive, Vol. 200, Letter d’Estournelles to Butler, 27 August 1913). This was Bérard’s letter of refusal. It is noteworthy that Milioukoff, in particular, regretted not having Bérard join the commission (CEIP European Center Records, Box 189, Letter to D’Estournelles, 20 August 1913).

³⁸ CEIP Archive, Vol. 200, Letter Bérard to d’Estournelles, 18 August 1913.

potentially rendered war not only part of a problem, but equally part of this problem's solution.

The CEIP and the commissioners by and large ignored this alternative formulation of the problem of war.³⁹ Those more radical parts of the European peace movements which subscribed to this view were not among their target audience⁴⁰, and at least some of the members of the commission deemed Marxism itself to be highly problematic.⁴¹ Where it did not ignore it, the commission's work countered this Marxist formulation of the problem of war by first renaming and then subverting the problem. Thus, when D'Estournelles sent a copy of Bérard's letter to Butler⁴², he commented that in the author's opinion, "the massacres have their origin in social hatred more than in religious or political ones."⁴³ Bérard himself had, in fact, also referred to war as a "social" problem, but what he had meant by this was that war was a problem of class relations. In the usage of the CEIP and the commission⁴⁴, however, the "social" problem of war had nothing to do with class:

"There is one other fact, partly economic but distinctly social, which should not be overlooked. [...] upward of a million and a half of men have been under arms during the

³⁹ In the available primary sources, there is one exception to this in the second chapter of the commission's report: "To the hatred of races there was added the resentment of the peasantry against the landlords (beys), who for generations had levied a heavy tribute on their labor and their harvests. The defeat of the Turkish armies meant something more than a political change. It reversed the relations of conqueror and serf; it promised a social revolution" (CEIP, *Causes and Conduct of the Balkan Wars*, 71).

⁴⁰ In fact, there were instructions not to get this part of the peace movement involved in the commission's work: "There ought to be no professional pacifist upon the commission. This is no work for man like La Fontaine, or Fried" (CEIP Archive, Vol. 200, Letter Butler to d'Estournelles, 21 July 1913).

⁴¹ D'Estournelles, for one, was an unashamed elitist and an outspoken opponent of Marxism (cf. CEIP Archive, Vol. 200, Explicatory note d'Estournelles to Bacon, 18 September 1913.) Furthermore, the report was clearly addressed to elites (cf. CEIP Archive, Vol. 201, Letter Prudhommeaux to Haskell, 21 November 1913).

⁴² D'Estournelles most strongly rejected the Marxist understanding of the problem of war: "The real struggle in the Balkans, as in Europe and America, is not between oppressors and oppressed. It is between two policies, the policy of armaments and that of progress" (CEIP, *Causes and Conduct of the Balkan Wars*, 16).

⁴³ CEIP Archive, Vol. 200, Letter d'Estournelles to Butler, 27 August 1913. Emphasis in original.

⁴⁴ Butler sometimes referred to war as a "social" problem, and so did the final report (c. CEIP Archive, Vol. 200, Letter Butler to Carnegie, 25 October 1913; CEIP Archive, Letter Butler to d'Estournelles, 7 October 1913; CEIP, *Causes and Conduct of the Balkan Wars*, 268f.).

past year. [...] to the large contingents which are kept in the service, composed mostly of young men, there is a probability of permanent harm. To be withdrawn from useful productive labor is bad enough; but life in the barracks, with much idleness in the streets of cities and large towns, is sure to be demoralizing and harmful. [...] War causes many kinds of human waste and this is one of them. The life of the recruits who are kept in service under present conditions in the Balkan States is unnatural and not favorable to moral growth..."⁴⁵

Here, "labor" did not constitute the point in which exploitative class relations crystallized and revolution would take its origin. Rather, the removal of individuals from "useful productive labor" was seen as a mechanism through which war gave rise to economic and moral difficulties. In this sense, those instances in which the report mentions war to be a social problem can be read as attempts to refute, by subversion, the Marxist idea of war as an expression of class struggle.

Much more than any Marxist-inspired formulation of war, the idea of war as heroic and as a driver of progress was – or so the commission believed⁴⁶ – the conventional view of war at the time. On the one hand, war was assumed to offer ample opportunities for bravery: to many of the commission's contemporaries, war was an "open door to glory and renown" and provided "a certain glamor."⁴⁷ On the other hand, war was also held to be a driver of individual and societal progress in that it stimulated the development of a "class of better human traits."⁴⁸ Inherent in this idea of war as heroic and a driver of progress was a dialectical formulation in which war's problematic element, namely the ontology (or nature) of battle, would eventually transcend itself.⁴⁹ In the primary sources, this understanding of the problem of war shines through, for instance, in some of those of the final report's passages which were originally written by Milioukoff. In his words, one problem of war was that because

⁴⁵ CEIP, *Causes and Conduct of the Balkan Wars*, 269.

⁴⁶ E.g. *ibid.*, 236, 265.

⁴⁷ *Ibid.*, 266; cf. 236, 265.

⁴⁸ *Ibid.*, 265.

⁴⁹ On the "dialectical element" of, for instance, a Clausewitzian understanding of war, cf. Balibar, "What's in a War," 374, *passim*, italics in original.

of “[t]he intoxication of combat,” soldiers were sometimes not “able to deliberate and choose” in a rational or enlightened way: caught in the “horrors of battle itself, [...] men were actuated and dominated solely by [battle’s] fury.”⁵⁰ Yet because the nature of combat ran counter to human nature, battle’s inevitable excesses would bring about a progressive counter-reaction: “The things we have described, horrible as they are, show in their very horror abnormal conditions which can not last. Fortunately for humanity, nature herself revolts against ‘excesses.’”⁵¹ Through this dialectic of intoxication and revolt, the problem of war transcended itself and ultimately furthered human progress.

To accommodate both public opinion and the CEIP’s institutional perspective, the Balkan Commission’s take on this Hegelian notion of war ultimately remained an ambiguous one. On the one hand, the commissioners agreed with public opinion that the First Balkan War had been a heroic and progressive “war of liberation,”⁵² yet at the same time, they also emphasized that “this first war [...] was only the prelude to the second fratricidal war” which, in any case, had been “the more atrocious of the two.”⁵³ On the other hand, the commission took great care not to stray too far from the CEIP’s general condemnation of war.⁵⁴ While the Hegelian view of war can sometimes be made out between the lines, the commission carefully redacted out of the report arguments that would have explicitly contradicted the CEIP’s wholesale condemnation of war. For instance, the first draft of Godart’s chapter argued that

⁵⁰ CEIP, *Causes and Conduct of the Balkan Wars*, 141, cf. 137, 142. Another member of commission, Godart, seems to also have held this idea: “And once started, how is it possible to hold back the soldiers? They set fire to everything, pillage and destroy for destruction’s sake” (*ibid.*, 245).

⁵¹ *Ibid.*, 147.

⁵² CEIP, *Causes and Conduct of the Balkan Wars*, 4, 265.

⁵³ *Ibid.*, 1; cf. Michail, “Western Attitudes,” 224). More generally, some of the peace movements at the time had not entirely let go of the idea of war as “honorable” and progressive – Montluc, for instance, wrote about the Franco-German War: “It was an honorable war! It is time to cease recriminating!” (CEIP Archive, Vol. 41, Letter Montluc to James Brown Scott, 5 August 1913).

⁵⁴ As expressed by its sponsor, Andrew Carnegie: “As long as men kill their fellow-men in war, we are not civilized but remain barbaric. Time was, when the profession of arms was the only profession worthy the gentleman, the time comes apace when no gentleman will enter a profession which makes the killing of men an affair of hire and salary” (CEIP Archive, Vol. 200, Andrew Carnegie, Entry into the guestbook of the Centre Européen de la Dotation Carnegie pour la Paix Internationale, 2 July 1913).

“reprisals” were “expressions of uncontrolled passion in the ardour of the struggle, angry blows [?] in the excitement of victory, and exhibitions of violence, very much like the most odious vengeance, against things and people.” In a subsequent round of editing, the reference to uncontrolled passion was dropped, and “reprisals” were rendered into particularly condemnable instances of violence: “they are often an excuse for odious vengeance, for unpardonable violence against things and people.”⁵⁵ In this way, the commission made sure to give a nod to those who thought of the First Balkan War as an emancipatory undertaking, yet also sought to counter the commonplace view of war as an opportunity for heroism and as a driver of progress.⁵⁶ Instead, the commission’s work promoted the idea that peace provided for exactly this kind of progress:

“War is exhibited as an operation of twofold patriotism, of moral benefit, because it exalts heroism, and of material profit because it increases several important industries. A little more, and we shall be told that it nourishes the population!

We have replied to these sophisms over and over again. [...] It is false that peace encourages slothfulness. To speak only of France living under a rule of peace that has lasted for forty-three years, never has youth been more enterprising, more daring, more patriotic than in our day. In default of a war, courage applies itself to fertile invention, towards exploration, to dangerous scientific experiments, to aerial and submarine navigation.”⁵⁷

Yet in order to successfully claim that peace furthered courage and progress as well as to be able to address war by practical means, mere declarations in favour of peace did not suffice. For if there was a dialectic inherent in war which brought about individual and social progress, attempts to solve the problem of war through practical, this-

⁵⁵ The full passage now read: “Then there are the reprisals: made as they are in the ardour of the struggle, in the heat of victory, and in a moment of anger, they are often an excuse for odious vengeance, for unpardonable violence against things and people.” For the initial formulation and the corrections, cf. CEIP European Center Records, Box 11, Folder 11.5, Godart, Draft of chapter VI, 9a; for the final formulation, cf. CEIP, *Causes and Conduct of the Balkan Wars*, 244f. The different handwriting and different colours of the ink suggest that it was not Godart himself who made these corrections.

⁵⁶ Cf. Todorova, *Imagining the Balkans*, 4.

⁵⁷ CEIP, *Causes and Conduct of the Balkan Wars*, 4.

worldly action were unnecessary and possibly even self-defeating. Therefore, the commission's work employed different arguments to challenge the dialectical formulation of the problem of war. For one, the commission diluted the ontological claim about the "nature" of combat by emphasizing questions of responsibility or "culpability"⁵⁸ as well as of the "roots" or "causes" of war.⁵⁹ Moreover, the commission's work drew a distinction between normal and excessive war-time violence and denied the latter an ontological status as "natural." Finally, the commission's work relocated the ontological claim from the moment of combat to combat's consequences: what was "natural" about war was the fact that people, during and after war, would be faced with dire economic and moral (psychological) consequences. Taken together, these arguments allowed the commission to counter the dialectical logic underlying the view of war as a driver of progress through a dialectical claim of its own: "violence carries its own punishment with it and [therefore] something very different from armed force will be needed to establish order and peace in the Balkans."⁶⁰

Summing up the insights this section has shed, I would like to capture some initial ideas regarding the practices, preconditions, and constitutive exclusions of the problematization of war in the work of the Balkan Commission in the form of working hypotheses.

⁵⁸ "The real culprits in this long list of executions, assassinations, drownings, burnings, massacres and atrocities furnished by our report, are not, we repeat, the Balkan peoples. Here pity must conquer indignation. Do not let us condemn the victims. Nor are the European governments the real culprits. They at least tried to amend things and certainly they wished for peace without knowing how to establish it. The true culprits are those who mislead public opinion and take advantage of the people's ignorance to raise disquieting rumors and sound the alarm bell, inciting their country and consequently other countries into enmity" (*Ibid.*, 19, cf. 68).

⁵⁹ CEIP Archive, Vol. 200, Letter Butler to d'Estournelles, 15 August 1913. "Prof. Prince, who is now here in Newport, and who greatly regrets that family considerations prevented his joining the Commission, tells me that the root of the struggle is really not religious at all, but racial." Milioukoff also looked into the "causes" or "reasons" of the first Balkan war (CEIP, *Causes and Conduct of the Balkan Wars*, 49). In Milioukoff's native Russian, the terms "reasons" and "causes" are not necessarily interchangeable, but they can be used thus. Thanks to Francesca Vantaggiato for clarifying this point for me.

⁶⁰ *Ibid.*, 15.

(1) *To problematize war, the Balkan Commission (re-)produced a specific structuring in which the problem at stake was one of corrigible deviance from a behavioural norm.*

For the moment, I will refer to this as a rational formulation of the problem of war. As the foregoing discussion has shown, the Balkan Commission rejected dialectical formulations of the problem of war, whether the idea of war as expressive of class struggle or the idea of war as a driver of historical progress, in favour of formulations in which war was problematic insofar as its economic costs and moral downsides outweighed its benefits and advantages⁶¹: “Today, war is condemned by all the great countries as an outdated instrument, not only immoral, but ineffective.”⁶² Dialectical and rational formulations of the problem of war differed with regard to what it actually meant for something to be a problem, or what the principal set-up or structure of a problem was. In dialectical formulations, a problem was something to be transcended – it was a driver for getting from one state of being to the next, better state. Although war itself could be problematic, it was usually merely indicative of another, bigger problem at stake.⁶³ By contrast, in the rational formulations which the commission preferred, a problem was not something to be transcended, but something which could be corrected, or to which there could be a solution. While this did not rule out the possibility that war *per se* might be problematic, in the commission’s work, the actual problem of war was mostly smaller than war itself: it lay in certain kinds of violence within war, and in this violence’s legal, economic, and moral wrongness.

(2) *Within this rational set-up of the problem of war, the commission’s specific formulation of the problem amounted to an exclusion of alternative possibilities.*

One way to understand the commission’s preference for rational formulations of the problem of war is as exemplifying a liberal politics of problematizing war. In this

⁶¹ My argument is not that the commissioners were cognizant of or even intentionally decided in favour of this aspect of their work. Rather, within their concern to practically address war, a move away from and against dialectical (and, as the next section of the chapter will discuss, metaphysical) notions of war was implied.

⁶² CEIP Archive, Vol. 200, Explicatory note d’Estournelles to Bacon, 18 September 1913.

⁶³ As exemplified by Bérard’s letter.

context, it is interesting to note Michail's argument that at the time of the Balkan Commission, there was an important "shift of focus in the moral standards of the liberal camp from liberty to non-violence."⁶⁴ In the commission's work, this shift arguably found expression in the crowding out of the understanding of the First Balkan War as a war of liberation by the general understanding of war as problematic: within "the fundamental distinction" which the commission drew "between the war of liberation and the war of conquest, [or] between patriotism and crime,"⁶⁵ the balance was tipping towards understanding war as potentially criminal. Concurrently, instead of seeing the main problem to lie with a lack of freedom, the commission's foremost concern was with excessive war-time violence.⁶⁶

(3) *The commission's formulation of the problem of war facilitated the exclusion of the Balkan states' governments and citizens from agency in and responsibility for the problem of war.*

In the primary sources under study, the commissioners and their various interlocutors⁶⁷ took the two Balkan Wars to constitute a problem first and foremost for western European governments and these governments' citizens⁶⁸ – a problem "of the ignorance and indifference of public opinion, as well as [...] of the resistances of the great Powers."⁶⁹ Only secondarily were the wars considered as a problem for the governments and citizens of the Balkan states. Moreover, insofar as the commission formulated the problem of war as one which could be solved, in charge of this solution were again, exclusively, the western European governments. This sweeping assumption of responsibility can be traced back to more general ideas about European modernity – a line of argument on which I will expand in the third section of this

⁶⁴ Michail, "Western Attitudes," 227.

⁶⁵ CEIP, *Causes and Conduct of the Balkan Wars*, 12.

⁶⁶ The same could perhaps be argue about dialectical structurings of the problem of war. For instance, insofar a Marxism had both "scientific" and "utopian" strands (cf. Jackson, *Conduct of Inquiry*, 53), how did these different strands make sense of and position themselves towards war?

⁶⁷ Though see Bérard's letter to Butler.

⁶⁸ "[T]he problem to be examined is a European one" (CEIP Archive, Vol. 200, Letter Butler to d'Estournelles, 21 July 1913; CEIP Archive, Vol. 121, Letter Dutton to Butler, 5 January 1914).

⁶⁹ CEIP Archive, Vol. 200, Letter d'Estournelles to Carnegie, 15 September 1913.

chapter. Here, I want to point out that the way in which the commission excluded the governments and the general population of the Balkan states from agential and ethical capacity was also congruent with the general set-up of the problem of war in the commission's preferred formulations. For whereas in dialectical formulations of a problem, transcendence was ultimately achieved through actions taken by those who were situated within the problem, rational formulations required someone situated outside of the problem to recognize and correct the deviance.

Practically speaking, the Balkan Commission sought to live up to the presumed imperative of taking responsibility for and action against the problem of war through producing and disseminating knowledge about the Balkan wars. How they did so is the subject of the next section.

A "scientific" way of knowing war

This section looks at how the Balkan Commission set out to take action on the problem of war by producing knowledge about it. My focus is on the array of forms, practices, and ideals that together made for what the commission understood to be its "scientific" way of knowing war, as well as on this way's conditions of possibility and on the political projects attached to it. Primarily, the commission intended to use the Balkan Wars as examples by means of which "to inform public opinion and to make plain just what is or may be involved in an international war carried out under modern conditions."⁷⁰ If their report was successful, the commissioners imagined "that such a reaction would result as to make another war impossible."⁷¹ To this end, the commission's report was addressed "to the attention of the governments, the people and the press of the civilized world."⁷² Out of these audiences, it was "public opinion"

⁷⁰ CEIP, *Causes and Conduct of the Balkan Wars*, Preface.

⁷¹ CEIP Archive, Vol. 121, Letter Dutton to Butler, 23 July 1913.

⁷² CEIP, *Causes and Conduct of the Balkan Wars*, Preface.

– the elites as well as “the masses of the people”⁷³ – whom the CEIP was most concerned to influence:

“Public opinion needs to be directed and held to this point. It is too easily carried away by admiration for feats of arms, exalted by historians and poets; it needs to be made to know all the butchery and destruction that go to make a victory; to learn the absurdity of the notion, especially at the present time, that war can enrich a country; to understand how, even from far off, war reacts on all nations to their discomfort and even to their serious injury.”⁷⁴

A second purpose of the commission and the report was to promote the position of the CEIP.⁷⁵ Founded in 1910, the CEIP was a young organisation and trying to establish itself within an already rather crowded Western European and US-American peace scene.⁷⁶ While the CEIP was financially much better endowed than most of its competitors, it still had to define its exact role and position. Butler, for one, hoped that the commission would “go far toward fixing in the minds of Europe, and of America, the true role of the Carnegie Endowment” and was “convinced that this commission, offers us a great opportunity to extend our influence and authority.”⁷⁷

The secondary literature has highlighted the innovative character of the institutional form, methods, and sources by means of which the commission produced the knowledge it deemed necessary for realizing its twofold purpose. While Michail has stressed the novelty of “the idea of an international commission,”⁷⁸ Kévonian has emphasized the multiplicity of sources used by the commissioners, including oral

⁷³ “[H]ow hard it is in a modern Democracy to get the plain, un-colored facts before the masses of the people. Their emotions are skillfully played upon by self-seeking interests, and such facts as are allowed to reach them, are carefully arranged so as to contribute toward reaching a predetermined end” (CEIP Archive, Vol. 200, Letter Butler to d’Estournelles, 18 August 1913).

⁷⁴ CEIP, *Causes and Conduct of the Balkan Wars*, 236.

⁷⁵ Cf. Trix, “Peace-mongering in 1913,” 148f.

⁷⁶ On the animosities surrounding the establishment of the CEIP, cf. CEIP European Center Records, Box 189, Letter Butler to D’Estournelles, 3 January 1913: “Nothing has disappointed me more than the small calibre and the extreme egotism and selfishness of many of those associated with the movement. This has explained to me more adequately than anything else, why the movement has made so little progress during the past twenty-five years.”

⁷⁷ CEIP Archive, Vol. 39, Letter Butler to d’Estournelles, 21 July 1913.

⁷⁸ Michail, “Western Attitudes,” 221.

depositions and interviews, consultations with experts, governmental reports, written depositions, photography, *in situ* investigation, press articles, medical reports, private correspondence, and statistics.⁷⁹ However, while my substantive concerns in this section are also with the “idea” of the commission, its methods, and its sources, my analytical emphasis is a different one: I seek to examine the commission’s way of knowing war without, as Stoler puts it, “treat[ing] the conventions and categories of analysis [...] as innocuous or benign.”⁸⁰ Rather, I want to pose these ostensibly epistemological forms and practices as historical and political, and moreover as co-productive of the commission’s formulations of the problem of war. In the first part of the section, I therefore attend to the institutional form of the commission of inquiry; in the second, I delineate two crucial and novel knowledge practices and discuss how these congealed into different ways of knowing war. Both parts examine the relationship between these aspects of the commission’s work and the commission’s formulations of the problem of war. Again, the section concludes with a number of working hypotheses.

The institutional form of the commission of inquiry

The Balkan Commission was an instantiation of an at the time widely known institutional form: the commission of inquiry. To the members of the commission and the CEIP’s staff, it was clear – if not in the particulars, then at least in a general sense – what Butler’s idea of a “commission of notable men” would amount to.⁸¹ Moreover, the form of the commission of inquiry was also recognizable to the people with whom the commissioners interacted during their journey through the Balkans.⁸² Against this

⁷⁹ Kévonian, “L’enquête,” 30.

⁸⁰ Stoler, *Along the Grain*, 95. For Stoler, this focus amounts to a way of asking “historical questions about accredited knowledge and power – what political forces, social cues, and moral virtues produce qualified knowledges that, in turn, disqualified other ways of knowing, other knowledges.”

⁸¹ For instance, in the letter with which he accepted the invitation to join the commission, Dutton wrote to Butler: “The plan of sending a commission to the Balkans for the purposes mentioned in your letter seems to me quite commendable” (CEIP Archive, Vol. 121, Letter Dutton to Butler, 23 July 1913).

⁸² “Some peasants who thought that we were a government commission, sent to inventory their losses, brought us long lists of them. Here are some of the papers which we kept for information, after

background, I wonder about what, with Stoler, I call “the content evident in [the] form.”⁸³ How did the Balkan Commission, as an instantiation of the general form of the commission of inquiry, contribute to a specific problematization of war in international politics? How did the form of the commission help to make war into an object of empirical knowledge and a problem for practical action with particular possibilities and blind spots?

Domestically, as Stoler has explained, commissions of inquiry had long been a means through which states asserted their “authority to make judgements about what was in society’s collective and moral good.”⁸⁴ The facts which commissions produced divided societies into their “normal” and “deviant” members and helped establish the state as differentiated from and alone able to truly know about society. States’ use of commissions of inquiry was not limited to the domestic realm, however. On the one hand, in the context of colonial rule and analogous to how they functioned in domestic contexts, commissions of inquiry consolidated states’ imperial power by differentiating and hence producing different kinds of colonial subjects.⁸⁵ On the other hand, in inter-state politics, “mixed” commissions of inquiry, consisting of representatives of the disagreeing state parties to a conflict, settled those questions of fact which were perceived to be pertinent to foreign policy yet not to touch upon states’ vital interests. Rather than marking off and thereby producing certain people as deviant or normal, these commissions marked off and produced certain questions as non-vital or vital. Moreover, insofar as they consisted of both of the state parties to a conflict, these commissions reinstated international politics as inter-state politics.⁸⁶

When, in 1895, a commission made up of official representatives of England, France, and Russia investigated into the so-called Hamidian massacres, the form of the

explaining to the villagers the mistake they made” (CEIP, *Causes and Conduct of the Balkan Wars*, 139). This “mistake” was only possible because the form of the commission of inquiry was known and recognizable to the “peasants” who committed it.

⁸³ Stoler, *Along the Archival Grain*, 105.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*, ch. 5.

⁸⁶ Cf. Kévonian, “L’enquête,” 36.

commission of inquiry entered the realm of vital international questions.⁸⁷ In the context of the emergence of humanitarianism⁸⁸, this commission not only helped to locate some states' "vital" interests in the domestic politics of other states, but invoked, for a group of European states, the authority to intervene into and to issue moral and political judgments about an "Eastern" empire's internal affairs. Shortly thereafter, the First Hague Conference of 1899 recommended commissions of inquiry as an instrument in addition to what were, at the time, the two main means of dealing with inter-state conflicts that diplomacy had failed to settle: mediation and arbitration. Like mediation, commissions of inquiry would not issue a binding decision; like arbitration, they were to be voluntarily constituted by the parties to the conflict and to contain an additional, neutral member.⁸⁹ This last point was the main difference between previous inter-state commissions of inquiry and the commission of inquiry as it was invented in The Hague. The Hague instantiation of the commission of inquiry also borrowed from the pre-existing inter-state commissions of inquiry: like these, it was a means of dealing with international conflicts "involving neither honor nor vital interests"⁹⁰; such matters "of serious disagreement or conflict" were, "before an appeal to arms," to be addressed by mediation.⁹¹ The second Hague Conference of 1907 essentially maintained this form of the commission of inquiry.⁹²

Thus, when the CEIP decided to initiate a study of the Balkan wars, the commission of inquiry was an available form for implementing this study. However, it was not the only such form: two other forms were contemplated but, ultimately, not undertaken.

⁸⁷ *Ibid.*, 35. Also referred to as the Armenian massacres, these were massacres of the Ottoman empire's Armenian population committed by agents of the empire (cf. Bengi Bezirgan, *Reframing the Armenian Question in Turkey: News Discourses and Narratives of the Past and Present* (Ph.D. dissertation, London School of Economics, 2015); Selim Deringil, "'The Armenian Question Is Finally Closed': Mass Conversions of Armenians in Anatolia during the Hamidian Massacres of 1895-1897," *Comparative Studies in Society and History* 51, no. 2 (2009), 344-371).

⁸⁸ Cf. Davide Rodogno, *Against Massacre: Humanitarian Interventions in the Ottoman Empire, 1815-1914* (Oxford, UK: Oxford University Press, 2011).

⁸⁹ Kévonian, "L'enquête," 35f.

⁹⁰ Hague Convention of 1899, Title III, Art. 9. Cf. Kévonian, "L'enquête," 35f.

⁹¹ Hague Convention of 1899, Title II, Art. 2.

⁹² Kévonian, "L'enquête," 36.

In October 1912, shortly after the outbreak of the First Balkan War, the Permanent Delegation of the French Peace Societies proposed for the CEIP to send “correspondents” charged with collecting materials to “illustrate all the disasters which a great modern war causes.”⁹³ These were to be “‘Peace Correspondents’ as opposed to ‘War Correspondents.’”⁹⁴ Furthermore, they were meant to be “representatives”⁹⁵ of the CEIP. The CEIP rejected the proposal, and d’Estournelles later claimed that he had “refused even to listen at these suggestions”⁹⁶ not least because in the understanding of the CEIP, these peace correspondents “would have the air of instituting themselves as judge between the belligerents.”⁹⁷ D’Estournelles and Butler did, however, continue to ponder the idea of initiating a study into the First Balkan War. “I note,” Butler wrote to d’Estournelles in early December 1912,

“that your Committee did not think well of the proposal to send representatives to make studies at the five capitals of the Balkan states. [...] What would you think, however, of instituting a careful inquiry into the personal and property losses in connection with this war?”⁹⁸

In reply, d’Estournelles mused that “it would be within the role of the [CEIP] to undertake [...] the inquiry of which you speak,” but that “it remains to be determined *in which form* and by whom this inquiry can be undertaken.”⁹⁹ Thereupon, the possibility of initiating a scientific study – “an exhaustive search into this matter” – was considered.¹⁰⁰ But in the end, this form was not utilised¹⁰¹: when, in July 1913,

⁹³ CEIP Archive, Vol. 198, Letter Prudhommeaux to Haskell, 22 October 1912.

⁹⁴ CEIP Archive, Vol. 198, Letter Prudhommeaux to Butler, 25 October 1912.

⁹⁵ CEIP Archive, Vol. 199, Letter Butler to d’Estournelles, 2 December 1912; CEIP Archive, Letter Prudhommeaux to Haskell, 20 December 1912.

⁹⁶ CEIP Archive, Vol. 200, Letter d’Estournelles to Carnegie, 15 September 1913.

⁹⁷ CEIP Archive, Vol. 198, Letter Prudhommeaux to Butler, 25 October 1912. Other reasons might include the interpretation of the First Balkan War as a war of liberation which was actually seen in a partly positive light as well as the institutional rivalry between the CEIP and the Permanent Delegation of the French Peace Societies.

⁹⁸ CEIP Archive, Vol. 199, Letter Butler to d’Estournelles, 2 December 1912.

⁹⁹ CEIP Archive, Vol. 199, Prudhommeaux to Haskell, 20 December 1912, my emphasis.

¹⁰⁰ CEIP Archive, Vol. 199, Letter Haskell to Prudhommeaux, 3 January 1913.

¹⁰¹ However, it continued to be under consideration even as the Balkan Commission was initiated and began to do its fieldwork. In September 1913, the CEIP’s Division of Economics and History was entertaining a “very extensive plan of investigation in the Balkan countries” which would “take two

Butler resolved to implement the long-pondered idea of an inquiry of the Balkan wars, he called neither for peace correspondents nor for a scientific inquiry, but for a “notable commission.”¹⁰²

As a specific instantiation of the historically emergent form of the commission of inquiry, the Balkan Commission both reproduced and reinvented this form.¹⁰³ First, by distinguishing normal from deviant war-time violence, the commission produced war as a certain kind of legal, economic, and moral problem to be addressed through practical action, but also, as a by-product, the population of the Balkans as deviant subjects of further international action. Secondly, the Balkan Commission claimed this epistemic and moral power not for states, but for an international civil society which was only just beginning to emerge as a self-conscious constituency within the international. In this respect, the commissioners seem to have been unsure how to understand their undertaking and the knowledge it produced vis-à-vis the “official”¹⁰⁴ knowledge of war produced by governments: were they a “private” initiative¹⁰⁵, an “unofficial” one¹⁰⁶, or did they, albeit not “official,” nonetheless “render a public service”?¹⁰⁷ Notwithstanding this ambiguity, however, the commissioners asserted for themselves a unique capacity for knowing about and addressing the problem of war.¹⁰⁸ Thirdly, the Balkan Commission, like previous commissions of inquiry, constituted an intervention into other states’ politics, and what is more, it was an application of the form of the commission to the “vital” interests of these states. The final report constituted a condemning commentary on the Balkan states’ foreign and security

and a half years and involve a total expenditure [...] of 15900 francs.” For this reason, the head of the Division, Clark, wondered whether Butler could tell him more about the “delegation” which, according to his sources, “has been sent by the Endowment to the Balkan States to make investigations in connection with the Balkan Wars” (CEIP Archive, Vol. 39, Letter Clark to Finch, 17 September 1913).

¹⁰² CEIP Archives, Vol. 200, Telegram Butler to Root, 19 July 1913

¹⁰³ Cf. Kévonian, “L’enquête,” 37f.

¹⁰⁴ CEIP, *Causes and Conduct of the Balkan Wars*, 12, *passim*.

¹⁰⁵ *Ibid.*, 234.

¹⁰⁶ CEIP Archive, Vol. 121, Letter Dutton to Butler, 5 January 1914.

¹⁰⁷ CEIP Archive, Vol. 200, Letter d’Estournelles to Carnegie, 15 September 1913.

¹⁰⁸ Cf. Kévonian, “L’enquête,” 14.

politics, and insofar as it sought to study war-related problems of health, education, and migration, it also constituted an intervention into their domestic politics of population.¹⁰⁹ Lastly, like the commissions of inquiry imagined by the Hague Convention of 1899, the Balkan Commission claimed all the more epistemic and moral authority for being impartial.¹¹⁰ Being international (none of its members came from one of the Balkan states) and non-governmental (its members, though citizens of states with a vested interest in the Balkans, were emphatically not official representatives of their governments), the commissioners were “owing obedience to no one, to no word of command, to no party or government, to no journal, to no representation, Balkan or European.”¹¹¹

Finally, how did the form of the commission of inquiry contribute to the Balkan Commission’s specific problematization of war in international politics? Here, I again want to end with a few working hypotheses.

(1) Insofar as the Balkan Commission established war as a problem of deviance (of deviant violence and, secondarily, of deviant subjects) from a behavioural norm, the form of the commission of inquiry helped along this structuring of the problem.

In establishing the problem to be one of deviance, the commission resorted to a framing of the problem which had long been part of the general form of commissions of inquiry and which, in this sense, was quite readily available.

(2) The form of the commission of inquiry also facilitated the move with which the commission claimed moral and epistemic authority in questions of war for an emerging

¹⁰⁹ Consider, for instance, the commission’s concern about “whether education [in the Balkans] has been effective in improving healthfulness, thrift and good taste as seen in the homes; in modernizing commercial and industrial methods; and raising standards of public health and sanitation” (CEIP, *Causes and Conduct of the Balkan Wars*, 270). Cf. Hansen, *Security as Practice*, 91.

¹¹⁰ “When you return and publish your opinions, which I hope will be unanimous and which will certainly have the greater authority in that they are exceptionally disinterested, you will contribute to the better understanding in both hemispheres, of a very simple truth” (Letter d’Estournelles to Brailsford, Dutton, Godart, Milioukoff, Schücking, 21 August 1913, reprinted in CEIP, *Causes and Conduct of the Balkan Wars*, 8).

¹¹¹ CEIP, *Causes and Conduct of the Balkan Wars*, 5.

international civil society, but excluded from this civil society the citizens of the Balkan states it studied.

Historically, the form of the commission of inquiry had excluded from epistemic and moral authority the subjects it counted, judged, and thereby produced, and the Balkan Commission assumed this particular exclusionary aspect without any apparent hesitation. Furthermore, the form of the commission of inquiry had historically been an instrument for governing society by producing it as different from the state.¹¹² As part of an emerging international civil society, the CEIP subverted this aspect of the form of the commission of inquiry: it appropriated it from governments and, by using it to render war a problem before international public opinion, directed it against traditional inter-state politics.¹¹³ To effect this subversion, however, the Balkan Commission excluded the subjects/societies about whom it produced knowledge from the broadened international politics it sought to establish. In this way, the form of the commission of inquiry helped make possible a problematization of war in international politics in which those most directly affected by war were not only a merely secondary part of the problem, but crucially not at all part of its solution.

Knowledge practices and ways of knowing

While Brailsford, Dutton, Godart and Milioukoff were on their journey around the Balkans, d'Estournelles wrote to Butler: "I hope that we will reach our goal, that is, that they will return to Paris with the material for a report in which we can put faith

¹¹² Or, if one wanted a more Foucaultian formulation of this, commissions of inquiry were an instrument of biopolitics/the government of populations.

¹¹³ In choosing the commission of inquiry as its means for addressing the problem of war, the CEIP aimed to overcome the logic of governmental approaches to addressing war, too. According to the categories proposed by the slogan of the peace movement – "War rather than slavery; Arbitration rather than war; Conciliation rather than arbitration" – while governments were at best capable of arbitration, the commission fell under the rubric of conciliation and hence surmounted the logic of war in a way which was not open to governments: "Arbitration repairs, conciliation prevents. Conciliation substitutes the spirit of fruitful cooperation for the sterile routine of antagonisms" (CEIP Archive, Vol. 200, Explicatory note d'Estournelles to Bacon, 18 September 1913).

[...]. The important point in the whole matter is to arrive at a reliable conclusion.”¹¹⁴ In the paragraphs to follow, I make sense of d’Estournelles’ concern by exploring the knowledge practices through which the commission collected “materials” and reached “conclusions” as well as the ways of knowing into which these practices coalesced. To begin with, out of the variety of knowledge practices of which the commission’s methods consisted, I single out two which were particularly central to the commission’s work and which in turn contributed to a novel way of knowing war. Next, I briefly discuss some of these knowledge practices’ historical preconditions. Finally, I reconstruct how knowledge practices and ways of knowing congealed into the main conclusions of the commission’s final report to thereby ponder in how far the commission’s formulation of the problem of war and its ways of knowing war co-produced each other.

To start with, the commission’s aforecited methods for gathering “materials”¹¹⁵ consisted of a number of practices such as collecting, visiting, talking, and looking. Out of these, I here focus on a specific practice of looking: the practice of direct observation. Direct observation was crucial to the commission’s approach to knowing war. It constituted the epistemological ideal after which all of the commissioners’ methods for gathering materials were modelled. Thus, the CEIP assumed that the commissioners should travel to the Balkans “in order that they might see for themselves what the conditions are”¹¹⁶ and that they would return with “observed facts.”¹¹⁷ The final report is full of statements such as this one: “to gain a personal idea of events in Thrace in the course of the two wars, a member of the Commission went to see the villages situated to the east of Adrianople.”¹¹⁸ In this as in many similar

¹¹⁴ CEIP Archive, Vol. 200, Letter d’Estournelles to Butler, 5 September 1913. The following day, d’Estournelles sent another letter to Butler: “I hope that the Commission will [...] reach conclusions that will justify the initiative taken by the Carnegie Endowment.” (CEIP Archive, Vol. 200, Letter d’Estournelles to Butler, 6 September 1913).

¹¹⁵ Today, we would probably refer to these materials as “sources” or “data.” Yet as these terms do not have the exact same meaning, and I therefore prefer to use the term used by the commissioners themselves.

¹¹⁶ CEIP Archive, Vol. 200, Letter Butler to d’Estournelles, 21 July 1913.

¹¹⁷ CEIP Archive, Vol. 201, Letter Butler to d’Estournelles, 10 February 1914.

¹¹⁸ CEIP, *Causes and Conduct of the Balkan Wars*, 123.

instances, direct observation was itself a method for producing materials. Where it was impossible for the commissioners to directly observe, alternative methods had to “supply the defect of personal observation,”¹¹⁹ and within almost all of these methods – in photography, in the collection of eyewitness accounts, and in the close study of written documents¹²⁰ – the practice of direct observation played a crucial role in the production of truthful materials.

Arguably, the practice of direct observation was not only central to the Balkan Commission’s work, but also a new development within the trajectory of this work. The French peace movement’s proposal of October 1912 had urged the practice of “going there” and had suggested a variety of empirical methods for gathering information. Yet it had understood these methods not as practices of looking, but as practices of collecting: it demanded that the CEIP “send to the Balkans, to the theatre of the war, correspondents charged with collecting on site [...] documents (informations, interviews, photographies, statistics, etc...).”¹²¹ This is not to suggest that the commissioners did not also engage in multiple practices of collecting. Rather, in the vein of genealogy as a history of multiple and contingent emergences, it is to highlight that the commissioners added to these the practice of direct observation.

With its materials thus gathered, the commission used several methods of inference to bring these materials to bear on each other and to reach conclusions: the generalization from individual examples¹²²; the eliminating comparison¹²³, juxtapositioning¹²⁴, or testing of “materials” against each other¹²⁵; and the cumulative combination of

¹¹⁹ Cf. *ibid.*, 128.

¹²⁰ On this latter point, consider how the commissioners dealt with a number of letters, written by Greek soldiers, which evidenced that their authors had been given order to commit “atrocities,” and had complied with this order. The commissioners reported that they had been “permitted to examine these documents at our leisure,” and that to ensure the letters’ authenticity, they “satisfied ourselves,” through meticulous study, “that the interesting portions of the letters were the same handwriting as the addresses on the envelopes (which bore the official stamp) and the portions which related only personal news; [and] that no tampering with the manuscripts had been practiced” (*ibid.*, 104f.).

¹²¹ CEIP Archive, Vol. 198, Letter Prudhommeaux to Haskell, 22 October 1912.

¹²² CEIP, *Causes and Conduct of the Balkan Wars*, 140, 143.

¹²³ *Ibid.*, 78.

¹²⁴ CEIP Archive, Vol. 200, Letter d’Estournelles to Butler, 19 August 1913.

¹²⁵ CEIP, *Causes and Conduct of the Balkan Wars*, 187.

“materials,”¹²⁶ often of different kinds (for instance, of material, written, oral, and photographic) evidence.¹²⁷ Again, these methods consisted of different practices, inter alia practices of sorting, of weighing, and of writing. Here, I focus on the commission’s use of this last kind of practice. Each of the report’s chapters was initially written by a single author, by hand¹²⁸, in English or in French, and involving a continuous back and forth between the draft and the materials.¹²⁹ The initial drafts were then circulated between the CEIP’s offices and among the commission’s members, commented upon and discussed, and revised.¹³⁰ Next, the chapters were touch typed, translated into the respective other language, and set in type.¹³¹ A lot of thought also went into the spelling of place-names which, or so it was claimed, were “written for the first time.”¹³² Finally, the proofs of the entire report were read and corrected by d’Estournelles, “word for word and quill in hand,”¹³³ as well as by a specially constituted “commission de rédaction.”¹³⁴ This protracted process attests to the central role different practices of writing played for the commission’s production of knowledge about war.

In addition, and once more in the vein of genealogy’s grasp of complex processes of emergence, there were also aspects to the commission’s practices of writing which had

¹²⁶ In some instances, the commissioners looked for “mutually consistent” materials or for an additional “element of confirmation” to arrive at an as completely truthful conclusion as possible (*ibid.*, 90). In other instances, however, the bringing to bear on each other of two materials found that “[b]oth narratives contain inaccuracies, and neither of them tells more than a part of the truth. Nor are we satisfied that the whole truth can be reached by the simple method of completing one story by means of the other” (*ibid.*, 93).

¹²⁷ *Ibid.*, 90.

¹²⁸ CEIP European Center Records, Boxes 9-11.

¹²⁹ For in the end, all of the reports conclusions were “buttressed by documents and citations from official papers” (CEIP Archive, Vol. 121, Letter Butler to Pupin, 5 June 1914).

¹³⁰ For an example, cf. CEIP Archive, Vol. 201, Letter Haskell to Prudhommeaux, 8 December 1913. Milioukoff’s chapters required the most extensive revision, as “the French of Milioukoff is more difficult to translate into true French than any other known language” (CEIP Archive, Vol. 201, Letter d’Estournelles to Butler, 30 January 1914; cf. CEIP Archive, Letter Prudhommeaux to Haskell, 23 December 1913; CEIP Archive, Letter Prudhommeaux to Haskell, 3 February 1914).

¹³¹ E.g. CEIP Archive, Vol. 201, Letter Haskell to Prudhommeaux, 8 December 1913; cf. CEIP Archive, Letter Prudhommeaux to Haskell, 23 December 1913.

¹³² CEIP Archive, Vol. 201, Letter Prudhommeaux to Haskell, 27 March 1914; cf. CEIP Archive, Letter Prudhommeaux to Haskell, 19 December 1913.

¹³³ CEIP Archive, Vol. 201, Letter d’Estournelles to Butler, 3 March 1914; cf. CEIP Archive, Letter d’Estournelles to Milioukoff, 2 March 1914.

¹³⁴ CEIP Archive, Vol. 201, Letter d’Estournelles to Butler, 3 March 1914.

originally not been foreseen and which only developed over the course of the inquiry. The French Peace Society's proposal of October 1912 had imagined that the peace correspondents would collect documents allowing for the drawing of conclusions and that these documents would be published, but it had not mentioned for the correspondents themselves to produce longer pieces of text.¹³⁵ Nor had the commissioners or the CEIP initially expected the "making" of the report to constitute a major and prolonged part of their work.¹³⁶ According to a letter by d'Estournelles written before the commissioners set off for the Balkans, the plan was for them to collect "testimonies," "opinions" and other official – i.e., government-issued – documents, to compile these into "exposés" representing the views of the different parties to the war¹³⁷, and finally to juxtapose these "elements of the report" in a way that was similar to how juridical exhibits would be organized and used in a court case. Once on their journey, however, the commissioners encountered various difficulties that led to a change of plans and practices. The Serbian government, for instance, was indignant about the appointment of Milioukoff, whom it perceived to be biased¹³⁸, and was therefore unwilling to officially communicate with the commissioners, and the Greek government, "anxious" not to betray its Serbian allies, only "welcomed [the commission] under the strictest reservations."¹³⁹ Meanwhile, the Turkish government had not kept the kinds of statistics which the commissioners were looking for.¹⁴⁰ In the face of these difficulties, the idea of "elements" to be collected, compiled, and

¹³⁵ Cf. CEIP Archive, Vol. 198, Délégation Permanente des Sociétés Françaises de la Paix, "Voeu à Transmettre aux Bureaux de Washington et de Paris de la Dotation Carnegie," Appendix to the letter of Prudhommeaux to Haskell, 25 October 1912.

¹³⁶ CEIP Archive, Vol. 200, Letter Butler to D'Estournelles, 21 July 1913. D'Estournelles, for one, was expecting for the commissioners to "return and publish your opinions" (Letter d'Estournelles to Brailsford, Dutton, Godart, Milioukoff, Schücking, 21 August 1913, reprinted in CEIP, *Causes and Conduct of the Balkan Wars*, 8). Another indication of the original idea that the commissioners were providing their opinions on the collected "elements" is the handwritten draft of Dutton's chapter, which he concluded as one would sign a letter: "Yours truly" (CEIP European Center Records, Box 10, Folder 2, Dutton, undated, "The Moral and Social Consequences of the War and the Outlook for the Future of Macedonia," 18).

¹³⁷ CEIP Archive, Vol. 200, Letter d'Estournelles to Butler, 19 August 1913.

¹³⁸ CEIP, *Causes and Conduct of the Balkan Wars*, 7.

¹³⁹ *Ibid.*, 9f.

¹⁴⁰ *Ibid.*, 243f.

juxtaposed came to be replaced by one of “materials” to be produced and analysed by the commissioners.¹⁴¹ In consequence, the commissioners themselves wrote large parts of the report, drawing on practices of writing that were neither legal nor journalistic. For while the materials for some of the chapters of the final report were originally arranged according to the structure of a court case – the materials on which chapter III is based, for instance, were organized into an “accusation,” a “defense,” and “depositions”¹⁴² – the chapters of the report themselves are not written according to this kind of legal logic. Moreover, the process through which the final report was written was also very different from how war correspondents produced newspaper articles. A writing process which had been anticipated, in late September 1913 and hence after the commission’s return to Paris, to take no more than a few weeks gradually turned into an almost year-long procedure more akin to the kinds of writing undertaken by the CEIP’s Division of Economics and History. Taken together, the commissioners’ practices of writing thus constituted a different and in many ways new, neither journalistic nor legal, genre for writing about war.

In the understanding of the commission, the commissioners’ practices of direct observation and of writing amounted to a novel, “scientific” way of knowing war. To appreciate this, it helps to take another look at the afore-mentioned letter by Butler, dated early December 1912. In this letter, Butler commented on the proposal of the French peace societies that whereas the correspondents envisioned by this proposal would “make studies” of the Balkan wars, he was looking for a different kind of “careful inquiry.”¹⁴³ Almost a year later, after the commissioners’ return from their journey through the Balkan states, Butler followed up on this train of thought. To Carnegie, Butler wrote that the commission’s work was

“[t]he first study ever made by the same scientific method that would be used in a laboratory, of the moral, social and economic effects of the war. [...] Through [the

¹⁴¹ Cf. *ibid.*, 12).

¹⁴² *Ibid.*, 326-255; CEIP European Center Records, Box 10, Folder 10.1, “Le manuscrit du chapitre IV de M. Miliukoff est entre ses mains,” 1 May 1914.

¹⁴³ CEIP Archive, Vol. 199, Letter Butler to d’Estournelles, 2 December 1912.

commissioners'] generous and devoted efforts, we are to give to the world not a political or a military history of the war, but a scientific study of the effect of a war."¹⁴⁴

At roughly the same time, a letter to d'Estournelles set out in more detail what Butler had in mind by the "scientific" and "laboratory method":

"[W]hat has been accomplished in the Balkan inquiry and something which [the] report might well emphasize is that it represents the first instance in history of a study of the results of war by the laboratory method and by a company of trained and disinterested observers who have only the highest interests of humanity to serve. We have had philosophical articles on war and we have had descriptions of battles, but this is the first time that trained men have ever gone into territory war has devastated and studied its moral, economic and social [word missing] by the inductive method of observation."¹⁴⁵

Here, "science" and "the laboratory method" were defined in several ways: they consisted of the specific practice of direct observation; furthermore, they consisted of "the commissioners' efforts"; and their result, the written report, was different from "philosophical articles" and "descriptions of battles." One could read this invocation of "science" and "the laboratory method" as a rhetorical claim – after all, Butler suggested that it was "something which [the] report might well emphasize." Albeit not incorrect, however, such a reading would fall short of recognizing the claim's wider implications. For, or so I want to argue, Butler's claim was indicative of a novel way of knowing war, a way whose supposedly "scientific" character resided in the Balkan Commission's very practices of direct observation and of writing. This way of knowing war resembled the "scientific" work of the CEIP's Division of Economics and History.¹⁴⁶ Yet whereas this division studied "topics most directly relating to the subjects of peace and war,"¹⁴⁷ the Balkan Commission – contrary to Butler's just-cited

¹⁴⁴ CEIP Archive, Vol. 200, Letter Butler to Carnegie, 25 October 1913.

¹⁴⁵ CEIP Archive, Vol. 200, Letter Butler to d'Estournelles, 7 October 1913.

¹⁴⁶ This division was "scientific" in contrast to the "popular" Division of Intercourse and Education (cf. CEIP Archive, Vol. 123, Letter Butler to Carnegie, 21 April 1913).

¹⁴⁷ CEIP Archive, Vol. 5, Undated memorandum. Indeed, the Division of Economics and History had also developed a "very extensive plan of investigation in the Balkan countries," yet this plan was apparently not put into practice (CEIP Archive, Vol. 39, Letter Clark to Finch, 17 September 1913).

letters, and as I have discussed in the previous section – studied war itself.¹⁴⁸ The commission's self-proclaimed "scientific" way of knowing war was even picked up by some of its critics, who then subsumed their criticism under this way of knowing.¹⁴⁹ Overall, the Balkan Commission is an example of the emergence not merely of new knowledge practices such as direct observation and report-writing, but of a new way of knowing war "scientifically." It was through a specific idea of "science" as based on empirical observation undertaken by "trained" and "disinterested" observers that the commission made sense of its practices of looking and of writing, and through these practices that the idea of "scientifically" knowing war was re-produced.

At this point, a few things call for clarification. For one, the new, "scientific" way of knowing war which the commission invented is not the only way of knowing which it exemplifies – it is also an example of a legal way of knowing war.¹⁵⁰ D'Estournelles claimed that the report was "an admirable work of justice, of science and of truth"¹⁵¹; Butler thought that it was "coldly *scientific and judicial* in character"¹⁵²; and Godart understood it to be "a prosecution speech."¹⁵³ One might even say that in the commission's effort to problematize war, scientific and legal ways of knowing war became entangled insofar as the commissioners found themselves unable to produce knowledge about the Balkan wars without issuing a judgment: "We can not authenticate these sacrifices without protesting, without denouncing their cost and

¹⁴⁸ The commission, it was reported at the time, "will investigate not the reasons for certain actions but the actions themselves will be fairly and clearly set forth" (CEIP Archive, Vol. 123, Korrespondenz des Verbandes für Internationale Verständigung, "The Carnegie Commission").

¹⁴⁹ "I do not realize that [the report] did afford a great deal of light, or that we seem to derive a great benefit from that very hard work and most intricate investigation. The concern looks perhaps more confused than beforehand. No doubt, the maps elaborately drawn up, and most artfully engraved, are very interesting and convenient, only if they are a very grand and useful illustration of the matter, I must say they are rather 'pretentious' maps, than real scientific geographical graphia. [...] What is the good of pointing it out again?" (CEIP Archive, Vol. 121, Letter Montluc to Butler, 10 December 1914). On the other hand, the CEIP also invoked the claim to "science" in order to forestall criticism (e.g. CEIP Archive, Vol. 121, Letter Butler to Pupin, 5 June 1914).

¹⁵⁰ Cf. Kévonian, "L'enquête."

¹⁵¹ CEIP Archive, Vol. 201, Letter d'Estournelles to Butler, 3 March 1914.

¹⁵² CEIP Archive, Vol. 121, Letter Butler to Pupin, 5 June 1914, my emphasis.

¹⁵³ CEIP Archive, Vol. 200, L'Humanité, *La mission Carnegie poursuit son enquête*, 9 September 1913.

their danger for the future.”¹⁵⁴ Moreover, direct observation and writing were not the only knowledge practices which went into the commissions’ scientific and legal ways of knowing war. A similarly important practice, for instance, was that of documenting. Butler’s argument about the report’s “scientific and judicial” character was based on the fact that “[e]very statement that it makes is buttressed by documents and citations from official papers,”¹⁵⁵ and Godart believed that as a “prosecution speech,” the report was particularly “impressive for its documentation.”¹⁵⁶ My argument in the foregoing paragraphs, therefore, is not that its presumably “scientific” way of knowing war was the commission’s only such way, or that the practices of direct observation and of writing were the only practices it utilised. Rather, I have focused on this way of knowing war and on these two knowledge practices because I find that these are, within the example of the Balkan Commission’s work, particularly pertinent aspects of the emergent international politics of problematizing war.

What I have done so far was to break down the Balkan Commission’s methods for gathering materials and drawing inferences into knowledge practices and to reassemble these into ways of knowing. This has allowed me to show that, *within* the CEIP’s initiative, the will to knowledge about war has a history. Expanding this line of reasoning, a further way to get at the historicity of this will would inquire into the preconditions of the commission’s knowledge practices and ways of knowing. Here, I only want to briefly allude to a few possible directions such an inquiry could take. For one, studies in the history and sociology of knowledge have argued that truth is a social product¹⁵⁷, and this social aspect of truth is apparent in the Balkan Commission’s work, too. The members of the commission were recruited exclusively through existing contacts and networks.¹⁵⁸ Once constituted, the commission amounted to “a

¹⁵⁴ CEIP, *Causes and Conduct of the Balkan Wars*, 5.

¹⁵⁵ CEIP Archive, Vol. 121. Letter Butler to Pupin, 5 June 1914.

¹⁵⁶ CEIP Archive, Vol. 200, L’Humanité, *La mission Carnegie poursuit son enquête*, 9 September 1913.

¹⁵⁷ I.e., that “truth” relies on collaborative practices in the laboratory and on a consensus about what constitutes trustworthy knowledge (Steven Shapin, *A Social History of Truth* (Chicago, IL: University of Chicago Press, 1994)).

¹⁵⁸ CEIP Archive, Vol. 200, Letter d’Estournelles to Butler, 1 August 1913: “du moment que nous ne voulons pas la composer avec la troupe habituelle des journalistes ou des voyageurs sans autorité

company of [...] observers,"¹⁵⁹ "remaining united in their labors, in spite of their great differences of temperament and of race"¹⁶⁰ and working, or at least pretending to work, in "complete harmony."¹⁶¹ During their journey through the Balkans, the commissioners mostly avoided separating and traveling on their own.¹⁶² The commission's practices of writing were similarly collaborative, and it was to express their alleged "spirit of unity" that the commissioners decided against indicating the authors of individual chapters and instead assumed collective authorship for the final report.¹⁶³ The collective aspect of the Commission's knowledge practices, moreover, also helped to ensure its impartiality: "even supposing Brailsford and Milioukoff capable of partiality, the presence of Godart and Dutton, on whom no suspicion whatever rests, should have been sufficient to make it possible for them to get at the truth."¹⁶⁴ As for ideational preconditions, as the discussion of the commission's formulations of the problem of war has hinted at, it was through ideas stemming from different, themselves emergent academic disciplines that the commissioners knew what to observe and what to draw inferences about in order to problematize war. For instance, from experimental psychology stemmed the idea of stimulus and response¹⁶⁵, from sociology and criminology, the notion of deviance¹⁶⁶, and from all of these new empirical disciplines, the desire for the observability of the problematic aspects of war.

particulière, nous sommes à la merci de la bonne volonté plus ou moins active de nos amis." Similarly, the distribution of the report proceeded within the CEIP's existing networks (cf. CEIP Archive, Vol. 201, Letter Prudhommeaux to Haskell, 21 November 1913). Cf. Kévonian, "L'enquête."

¹⁵⁹ CEIP Archive, Vol. 200, Letter Butler to d'Estournelles, 7 October 1913, my emphasis.

¹⁶⁰ CEIP Archive, Vol. 200, Letter d'Estournelles to Butler, 15 September 1913.

¹⁶¹ CEIP, *Causes and Conduct of the Balkan War*, 11. In this, each of them was meant to make a particular contribution to the collective effort (cf. CEIP Archive, Vol. 200, Butler to d'Estournelles, 13 October 1913).

¹⁶² Trix, "Peace-mongering in 1913," 151f.

¹⁶³ CEIP 1914, 11. Cf. Trix, "Peace-mongering in 1913," 152.

¹⁶⁴ CEIP Archive, Vol. 200, Letter d'Estournelles to Butler, 5 September 1913; cf. CEIP, *Causes and Conduct of the Balkan Wars*, 7).

¹⁶⁵ Cf. Mandler, *History of Modern Experimental Psychology*.

¹⁶⁶ Cf. Jacqueline Urla, Jennifer Terry, "Introduction: Mapping Embodied Deviance," in Jacqueline Urla, Jennifer Terry (eds.), *Deviant Bodies* (Bloomington, IN: Indiana University Press, 1996), 1-18; Milos Vec, "Sichtbar/Unsichtbar: Entstehung und Scheitern von Kriminologie und Kriminalistik als semiotische Disziplinen," in Rebekka Habermas, Gerd Schwerthoff (eds.), *Verbrechen im Blick: Perspektiven der neuzeitlichen Kriminalitätsgeschichte* (Frankfurt, Germany: Campus, 2009), 383-414.

Lastly, we could also look at the material preconditions of the commission's knowledge practices and ways of knowing. As such, we could ask in how far the commission's practice of direct observation was enabled, *inter alia*, by new technologies such as photography¹⁶⁷, or also whether its practices of writing – for instance, Milioukoff's practice of adding footnotes by gluing little scraps of paper to the pages of his hand-written draft chapters¹⁶⁸ – extended or broke with pre-existing practices such as the practice of newspaper clipping.¹⁶⁹

Finally, can one speak, in the example of the Balkan Commission, of a co-production of the problem of war and practices and ways of knowing war? To contemplate this question, I reconstruct how the commission's knowledge practices and ways of knowing congealed into the three main conclusions put forth by the commission: that all sides had violated the laws of war; that war was an economic problem; and that war was a moral problem. Preceding these conclusions was the fact, presumed more or less from the outset, that all parties to the wars had committed atrocities.¹⁷⁰ While the commissioners and the staff of the CEIP were all committed to further evidencing this fact, it remained for them to work out over the course of their inquiry how to interpret it. How could the legal, economic, and moral problems of war be made observable in the atrocities, and how did the commissioners, through practices of

¹⁶⁷ Cf. Michael Griffin, "The Great War Photographs: Constructing Myths of History and Photojournalism," in Hanno Hardt, Bonnie Brennen (eds.), *Picturing the Past: Media, History and Photography* (Urbana, IL: University of Illinois Press, 1999), 122-157.

¹⁶⁸ For instance, see the hand-written drafts of the chapters authored by Milioukoff in CEIP European Office Records, Box 9, Folder 9.5; Box 10, Folders 10.1 and 10.2.

¹⁶⁹ Cf. Lorraine Daston, "Warum sind Tatsachen kurz?," in Anke te Heesen, Barbara Büscher, Christoph Hoffmann, Hans-Christian von Herrmann (eds.), *Cut & Paste um 1900: Der Zeitungsausschnitt in den Wissenschaften* (Berlin, Germany: Kaleidoskopien, 2012), 132-144; Anke te Heesen, *The Newspaper Clipping: A Modern Paper Object* (Manchester, UK: Manchester University Press, 2014).

¹⁷⁰ In the telegram with which he started the initiative, Butler linked this to news reports of atrocities committed by the Bulgarian army (CEIP Archive, Vol. 200, Telegram Butler to d'Estournelles, 19 July 1913). Yet in the first longer statement of the CEIP's European Office, the argument was about atrocities committed by all of the parties (CEIP Archive, Vol. 200, Letter of the European Office to Butler, 22 July 1913). Then, according to d'Estournelles's programme for the commission, the commissioners seem to have begun their investigations by trying to verify reports of atrocities committed by all sides (CEIP Archive, Vol. 200, D'Estournelles, "Une Mission de la Dotation Carnegie dans les Balkans," 19 August 1913). The hypothesis that all parties to the war had in fact committed atrocities began to become a conclusion soon thereafter.

writing, build from individual observations of atrocities to intermediate statements and from these to full conclusions?

With regard to war as a legal problem, the commission shied away from concluding that international law's rules concerning the opening of hostilities had been violated¹⁷¹, but believed to be "on much firmer ground when we pass to the law and custom of land warfare, violated by all the belligerents despite the existence of an international convention [the Second Hague Convention] signed by them all."¹⁷² In order to conclude that all sides to the wars had violated the rules of land warfare¹⁷³, this general statement was broken down into more specific claims according to which one or another state party had committed excessive violence, and then into even more specific claims regarding individual incidents of excessive violence – for instance, that "[o]f this particular squad of Greek cavalry, it is not too much to say that they were slaughtering Bulgarian peasants at sight."¹⁷⁴ In order to conclude that a specific act of violence such as this one had been excessive and had violated the laws of war, it was necessary not only to prove that it had actually happened¹⁷⁵, but furthermore to impute base motives¹⁷⁶: that the act was motivated by vile intentions, or that the victims "were killed in cold blood."¹⁷⁷ To establish base motives, the commission sought to make

¹⁷¹ CEIP, *Causes and Conduct of the Balkan Wars*, 210.

¹⁷² *Ibid.*, 211.

¹⁷³ In addition, the commission assumed that the applicable law of land war was unknown to most of the belligerents (cf. *ibid.*, 101).

¹⁷⁴ *Ibid.*, 101.

¹⁷⁵ Which, for some of the incidents of violence reported in the newspapers, turned out not to have been the case (see, for instance, *ibid.*, 78).

¹⁷⁶ As Nicola Lacey has shown, in both the theory and practice of criminal law in general, "'factualised' conceptions of intentions and recklessness [...] begin to emerge in the latter half of the nineteenth century" (Lacey, "In Search of the Responsible Subject," 369, fn. 73). By the time of the Balkan Commission, knowledge of the *mens rea*, or the subjective will to doing wrong, had become a requirement of guilty verdicts in criminal trials – and even if the commissioners discussed specific atrocities as violations of the law rather than as crimes, this requirement informed their ways of knowing these atrocities.

¹⁷⁷ "If they [victims] were killed in cold blood an 'atrocious' was perpetrated, but during a confused day of street fighting they may possibly have been killed by accident" (CEIP, *Causes and Conduct of the Balkan Wars*, 93). Some specific acts of violence, however, did not require the actual establishment of base motives, but were considered to always be driven by base motives and to be excessive: "the violation of women admits of no excuse; it can only be denied" (*ibid.*, 104). Interestingly, this might

intentions observable. For example, the conclusion that a member of the Greek army had committed an atrocity was confirmed both by an eyewitness' testimony and by "material corroboration" in the form of a wound which the commissioners had been able to see for themselves:

"The essential points are (1) that [the witness] saw his village burned, and (2) that another Greek cavalryman whom he met later in the day all but killed him with a revolver shot and a saber cut at close quarters [...]. The material corroboration of this story is, that [the witness] still bore the marks of his wounds. A shot wound may be accidental, but a saber wound can only be given deliberately and at close quarters. A trooper who wounds a boy with his sword can not plead error. He must have been engaged in indiscriminate butchery."¹⁷⁸

In another instance, the base motives allegedly leading to excessive war-time violence were inferred from a "popular battle picture" showing "a Greek soldier gouging out the eyes of a living Bulgarian. [...] As an evidence of the feeling which animated the Greek army these things have their importance. They mean [...] that Greek soldiers wished to believe that they and their comrades perpetrated bestial cruelties."¹⁷⁹ Finally, the commission then built from their conclusions regarding individual incidents of excessive violence to more general statements. While

"[w]e should hesitate to generalize from this [evidentiary] basis [...], but we are able to add in the appendix a summary of a large number of depositions taken from refugees by Professor Miletits of Sofia University. [...] This great mass of evidence goes to show that there was nothing singular in the cases which the Commission itself investigated."¹⁸⁰

criminalize almost exactly that "irrational" element of war/fighting which in what I called the Hegelian view of war constituted the driver of progress.

¹⁷⁸ *Ibid.*, 101.

¹⁷⁹ *Ibid.*, 97. A final example of the "visibility" of base motives: "The sacrilegious intention was even more clearly visible in the way in which the cemetery was treated. 'All' the headstones were not broken, as Mr. Loti states, but some of them were. It is likewise true that one of the graves is open. In the bottom of the trench the member of the Commission found the remains of a brandy bottle; relic of a joyous revel!" (*ibid.*, 124)

¹⁸⁰ *Ibid.*, 103.

In sum, the commission's practices of direct observation and of writing and the legal problem of war were co-productive. For one, the commission's ambition to render observable base motives made it impossible to think, as Godart had proposed, of "war in general [as] the great responsible of all the excesses"¹⁸¹ and instead required that this responsibility be attributable to the individuals who had committed atrocities. Yet the fact that the commissioners only arrived to the Balkans after the end of the second war and could not observe the atrocities as they happened also made it necessary for them to incorporate into their practice of direct observation an element of interpretation.

A similar co-production of formulation and knowledge practices also occurred with regard to the economic problem of war. That the commissioners "arrived in the Balkans after the fighting was over" did not impede them from observing this economic problem:

"the traces of the war were still fresh. The Commission noted them. If the corpses of the victims were not visible their countless graves were everywhere, the mounds not yet invaded by the grass that next summer will hide them away. Visible too were the wounded in the hospitals and the mutilated men in the streets and on the roads; the black flags, hanging outside the doors of the hovels, a dismal sign of the mourning caused by the war [...]. The members of the Commission saw towns and villages laid in ashes, their walls calcined, the house fronts torn open by shell or stripped of their plaster by riddling shot."¹⁸²

To systematize what they had observed, the commissioners intended "to make an estimate of the cost of the double war,"¹⁸³ a "sinister inventory" that would ideally take the form of a "balance sheet of the war."¹⁸⁴ However, the attempt to conclude an exact count of each side's killed and wounded soldiers failed¹⁸⁵, and the commission also found that "[i]t is not possible to compute, chapter by chapter, the extent of the

¹⁸¹ Cf. CEIP Archive, Vol. 200. *L'Humanité, La mission Carnegie poursuit son enquête*, 9 September 1913).

¹⁸² CEIP, *Causes and Conduct of the Balkan Wars*, 236.

¹⁸³ *Ibid.*, 236.

¹⁸⁴ *Ibid.*, 243. For some of the commission's attempts at drawing up tables detailing the costs of the war, cf. CEIP European Office Records, Box 11, Folders 11.4 and 11.5.

¹⁸⁵ Cf. CEIP, *Causes and Conduct of the Balkan Wars*, 243f.

material losses by destruction of property.”¹⁸⁶ In instances in which it was thus impossible to determine exactly the material and human “cost” of the wars, the commissioners resorted to extrapolating more general figures from individual examples. For instance,

“[f]rom the losses here sustained by a single family, — father and two sons — amounting to fr. 19,500 [...], some idea may be formed of the enormous figures of the estimated cost of the Balkan War to the inhabitants. The loss caused the Servian peasants by the Bulgarian invasions at Knjazevac is rated in the document we publish at fr. 25,000,000 or 30,000,000.”¹⁸⁷

Thus, the commission’s practice of direct observation helped produce the economic problem of war as principally empirical — as perceivable, countable and estimable. At the same time, however, insofar as the full scale of the economic problem of war was unknowable, the problem also required an adaptation of the commissioners’ knowledge practices, in particular its practices of writing and of drawing inferences.

Finally, the commission held war to be a moral problem. Compared to the empirical detail which went into the establishment of the legal and economic problems of war, the morally problematic aspect of war — which consisted of its effect on individual and collective psychology — was empirically elusive: even when broken down to the level of individual examples, the moral problem of war for the most part did not lend itself to direct observation, estimation and description. There were a few instances in which the commissioners thought that war’s moral effect was immediately observable.¹⁸⁸ More generally, however, their notion of war as a moral problem was so little specified that they were at a loss as to how to make this problem observable¹⁸⁹ and concluded that war’s “moral consequences [...] can not be estimated.”¹⁹⁰ They mused that it was

¹⁸⁶ *Ibid.*, 246.

¹⁸⁷ *Ibid.*, 140.

¹⁸⁸ For instance, the report spoke of people who were “stunned by the enormity of their losses. Despair is written on their faces” (*Ibid.*, 267).

¹⁸⁹ *Ibid.*, 269. On the collective level, the experience of excessive violence was deemed to be “something which the nations have absorbed into their very life, — a sort of virus which, through the ordinary channels of circulation, has infected the entire body politic.”

¹⁹⁰ *Ibid.*, 267.

the nature of the moral problem of war which rendered it unobservable: “[t]he unrestrained and barbarous methods of carrying on war employed by all the Balkan nations [had] moral consequences to all concerned so terrible *that they can hardly be appreciated*.”¹⁹¹ The moral problem of war was also exceedingly difficult to write about, for “no language can describe the tortures and griefs [of war].”¹⁹² Furthermore, because of their failure at rendering observable war’s deleterious moral effects, the commissioners’ writing about the moral problem of war often had to leave an inferential gap between an observation they had made and a conclusion they drew¹⁹³, and they cautioned that their report in the end provided “only a partial and abstract picture of the war.”¹⁹⁴ On the one hand, therefore, the commission’s new, “scientific” way of knowing war and its adherent practices of observation and of writing produced the moral problem of war as unknowable – empirically unobservable, indescribable, quite literally unwritable. Yet on the other hand, war’s “moral effect [...] can not easily be effaced”¹⁹⁵: as a moral problem, war demanded to be observed and written about and thereby made the commission’s practices of looking and of writing all the more urgent.¹⁹⁶ Thus, there was an inherent tension within the newly available, “scientific” way of knowing war: as a moral problem, war demanded that science’s new instruments and practices should be utilized to know and address it, yet as an object of knowledge, it was not fully accessible to these instruments and practices.

One way of summarizing the insights of the foregoing discussion would be to point out, as a common denominator of the commission’s knowledge practices and ways of

¹⁹¹ CEIP Archive, Vol. 201, Letter Dutton to Butler, 5 January 1914, my emphasis; cf. CEIP Archive, Vol. 200, Letter d’Estournelles to Carnegie, 15 September 1913: “I know these atrocities are worse than any report can describe them.”

¹⁹² CEIP, *Causes and Conduct of the Balkan Wars*, 267.

¹⁹³ For instance: “There is evidence to show that in some cases these acts were committed by soldiers acting under orders. It is to be feared that many a young man learned for the first time to commit acts of violence and crime not permitted in civilized warfare” (*ibid.*, 265).

¹⁹⁴ *Ibid.*, 108.

¹⁹⁵ *Ibid.*, 267.

¹⁹⁶ Symptomatically, the above-cited statement about the indescribability of war’s grief was immediately followed by an attempt to put exactly this aspect of war into writing: “Repeated instances of death by fright of girls and young children attest to the horror of the orgy of crime which was enacted” (*ibid.*).

knowing war, a marked tendency away from metaphysics and towards empiricism. In light of this, a first working hypothesis I want to propose here is that,

(1) *The Balkan Commission exemplifies the co-production of several aspects of the problematization of war in international politics: seemingly all at once, war was becoming this-worldly, empirically knowable, and a practically addressable problem.*

For one, war's becoming an object of empirical knowledge was intertwined with what Kévonian has called its "desacralization,"¹⁹⁷ or war's becoming this-worldly. As a contemporary description of the Balkan Commission put it, "when 'holy' wars are brought forward it is time to test with careful investigation the motives and results, the measures and means of such wars,"¹⁹⁸ and further:

"No organized court of justice pronounces judgment upon the destruction and waste brought about by war. This is left to history. History indeed passes the final judgment, but history is not fate, a blind Nemesis, - *history is in the last analysis also only a human judgment of human deeds.* Human reason is called to judge the action and conduct of peoples and of governments. Here finally human reason has recognized that this judgment is the high and difficult task [of humans today]."¹⁹⁹

This dual desacralization of war and of knowledge about war was furthermore intertwined with the CEIP's and the commissioners' preferred structuring of the problem of war as soluble, or as consisting in the corrigible deviance from a behavioural norm. The CEIP assumed that empirical knowledge about war was uniquely able to solve the problem of war because it was capable, more so than theoretical or philosophical knowledge, of educating people about war's economic and moral wrongness. "For the education of public opinion, nothing compares to precise examples taken directly from reality,"²⁰⁰ and in fact, the Balkan wars were "the

¹⁹⁷ Kévonian, "L'enquête, 30."

¹⁹⁸ CEIP Archive, Vol. 123, Korrespondenz des Verbandes für Internationale Verständigung, "The Carnegie Balkan Commission," 20 September 1913.

¹⁹⁹ *Ibid.*, my emphasis.

²⁰⁰ CEIP Archive, Vol. 199, Letter Prudhommeaux to Haskell, 20 December 1912. Regarding the commission's convictions about the difference between "philosophical" treatises and their own inquiry, see also CEIP Archive, Vol. 121, Letter Dutton to Butler, 23 July 1913; CEIP Archive, Vol. 199,

most true to original specimen copy of the atrocities of war.”²⁰¹ It seems impossible to completely disentangle or to make individually thinkable these three emergent aspects of the problem of war, yet perhaps this is exactly what this points to: that the ways in which we seek to know about war are deeply enmeshed with what we believe the problem of war to consist in, and furthermore, with how we believe for this problem to be structured.

(2) *At the time of the Balkan Commission, this take on war as an at once this-worldly, empirically knowable, and practically addressable problem was not yet a taken for granted notion.*

At least, this is suggested by the letter with which Léon Montluc, a prominent member of the French peace movement²⁰², articulated with “Breton frankness” his criticism of the commission’s work:

“With reference to the evils of war, common sense suffices to teach us that war is inseparable with frightful proceedings, all sorts of delinquencies, crime and atrocities? [...] Moreover, it is clear that it is a very hard and almost unattainable task, to aim at evidencing atrocities, crimes, delinquencies committed during a period of warfare! Every lawyer, and especially judges, have experienced how difficult it is to ascertain facts even in peace on all civil or criminal cases! To make peace, when one undertakes to investigate into events, which took place in time of wars, some months prior to the inquiry. Therefore my humble opinion is the Commission took a great deal of trouble to meet with a very puny benefit, a benefit which is no other than to circulate and enhance horrid effects of war [...]. No doubt the Inquiry and its Report will convince every body that mankind is unfortunately far from progressing! Sad, very sad indeed! But it looks as if Science had proved to incur into Bankruptcy, or at least Failure! People are learning all sort of things, indeed, but prescinding of the clear notion of moral

Letter Prudhommeaux to Haskell, 17 January 1913; CEIP Archive, Vol. 200, Letter Butler to d’Estournelles, 7 October 1913.

²⁰¹ CEIP Archive, Vol. 201, Letter Prudhommeaux to Butler, 6 January 1914.

²⁰² Montluc was “one of the correspondents of the Division of International Law, member of the Court of Appeals of France, and member of the Institute of International Law, and also President of the ‘Breton Group of Peace and Liberty’” (CEIP Archive, Vol. 41, Letter Butler to North, 26 August 1913).

duties founded on true philosophy or Christian religion, I am afraid no good can be derived from the diffusion of extensive but shallow knowledge all over the people.”²⁰³

I quote Montluc’s letter at length because it challenges all three of the elements of the Balkan Commission’s notion of war as problematic. For one, the author clearly did not believe in the power of science and empirical knowledge of war to change people’s minds and spur them into action. Moreover, he held it to be difficult, if not impossible, to empirically know war. Furthermore, Montluc had no intention of desacralizing “the evils of war” and feared that the empirical knowledge of war which the CEIP was disseminating was actually harmful: it distracted people from the kind of “clear notion of moral duties” that could be found in metaphysical systems such as philosophy or religion.²⁰⁴ A final point worth noting is the timing of Montluc’s Philippic. His letter was written in France in late 1914, i.e. in the same moment in which others were taking up the form of the commission of inquiry to document German war crimes in Belgium and France. In this context, Montluc’s letter casts doubt on any assumption according to which there was a direct causal link between the phenomenon of war and the notion of war as an object of empirical knowledge and practical action.

A final working hypothesis I want to propose is that,

(3) *The commission’s knowledge practices were not inherently empiricist.*

As I have discussed before, the commissioners, notwithstanding their general preference for empirical knowledge, sometimes incorporated empirically unobservable elements into their formulations of the problem of war. Here, I would like to add that there was also at times a metaphysical aspect to the commission’s knowledge practices. Butler, for instance, believed that one sometimes had to “[look] beneath the surface” in order to “[get] the real spirit of what passed before your eyes.”²⁰⁵ The commission’s practice of direct observation, that is, was not confined to applications within the experiential realm, but could yield insights into realities lying

²⁰³ CEIP Archive, Vol. 39, Letter Montluc to Butler, 10 December 1914.

²⁰⁴ On the waning of metaphysical views of war, cf. Weinke, *Gewalt, Geschichte, Gerechtigkeit*, 104.

²⁰⁵ CEIP Archive, Vol. 200, Letter Butler to d’Estournelles, 14 July 1913.

beyond the boundaries of the empirically knowable, too. More generally, this suggests that there was nothing naturally inherent to the commission's knowledge practices and ways of knowing war – rather, these practices were what was made of them.

However, while the development and application of new ways of knowing does bespeak the commissioners' creativity, this is not to suggest that the commissioners were deliberately at work on their knowledge practices. Nor were they creative under conditions of their own choosing – rather, their knowledge practices hinged on pre-existing conditions of possibility to whose reproduction, in turn, they contributed. To sound out this argument, the next section of the chapter attends to one particular set of conditions of possibility: to the spatio-temporal dimensions of the commissioners' work, and specifically to European modernity as a location from which to know about and take action against war.

“European-modernity” and the production of epistemic and ethical subjects

The spatial and temporal positioning of the problem of war vis-à-vis different ways of knowing about and taking action against war is a curious aspect of the Balkan Commission's work. For one, the commission's various formulations of the problem of war derived much of their persuasive power from being located simultaneously in particular locales and within the international. While the commission intended to problematize “international war”²⁰⁶ or war “as a method of settlement of international questions,”²⁰⁷ the more specific problems of war that it formulated were problems with both international and local ramifications.²⁰⁸ Likewise, the commission's ways of

²⁰⁶ CEIP, *Causes and Conduct of the Balkan Wars*, Preface.

²⁰⁷ CEIP Archive, Vol. 201, Letter Haskell to Prudhommeaux, 9 March 1914.

²⁰⁸ As the discussion in the first section has shown, the various problems of war which the commission formulated impacted on specific locales. At the same time, however, these problems had international consequences. For instance, one aspect of the economic problem of war was that “[e]very war upsets this universal movement [of international trade], especially today when the solidarity of international interests is so marked” (CEIP, *Causes and Conduct of the Balkan Wars*, 236). Likewise, the moral problem of war had an international aspect to it insofar as war was a cause of “the indignation of the general conscience” (CEIP Archive, Vol. 200, Telegram d’Estournelles to Butler, 21 July 1913), as well as a

knowing war were simultaneously locally and internationally grounded. Since “[t]o the man who sits at home, [...] war assumes a certain glamor,”²⁰⁹ the commission stressed how its report was based on observations made “on the spot”²¹⁰ or “sur place.”²¹¹ Yet the commissioners also hoped that their report would be all the more compelling for being issued “from the standpoint of humanity”²¹²: “[t]he impartial juxtaposition of these diverse statements in the same international document, will be a powerful means of serving the truth and of disproving the accusation of injustice on our part.”²¹³

As regards questions of time, the work of the Balkan Commission conceived of war and peace as distinct temporal periods, with peace being the general condition to which war constituted an interruption.²¹⁴ An additional kind of temporal condition, referred to as “the hour of the settling of accounts”²¹⁵ or also as a “period of disorder,”²¹⁶ was located “immediately after the war” and thus wedged between war and peace.²¹⁷ This delineation of war, immediate aftermath, and peace into separate temporal conditions then allowed the commission to structure the legal, economic, and moral problems of war it proposed into problems that were temporally distinct from their potential solutions. In turn, this temporal structuring of problems and solutions was aligned with the commission’s way of knowing war. On the one hand, the initial idea had been for the CEIP to conduct an inquiry not into a past, but into an ongoing war, and it was only at a later stage of the planning process that Butler and

problem specifically for “the new world movement for international cooperation and justice” (CEIP, *Causes and Conduct of the Balkan Wars*, 272).

²⁰⁹ CEIP, *Causes and Conduct of the Balkan Wars*, 266.

²¹⁰ *Ibid.*, 123.

²¹¹ CEIP Archive, Vol. 200, D’Estournelles, “Une Mission de la Dotation de la Dotation Carnegie dans les Balkans,” 18 August 1913.

²¹² CEIP Archive, Vol. 123, Correspondence of the German “Verband für int. Verständigung,” 20 September 1913.

²¹³ Letter d’Estournelles to commissioners, 21 August 1913, in CEIP, *Causes and Conduct of the Balkan Wars*, 9.

²¹⁴ E.g. CEIP, *Causes and Conduct of the Balkan Wars*, 107f., 236.

²¹⁵ *Ibid.*, 236.

²¹⁶ *Ibid.*, 257.

²¹⁷ *Ibid.*, 264.

d'Estournelles decided that the research should take a retrospective approach.²¹⁸ On the other hand, what mattered to the commissioners was not that their initiative took a retrospective approach to knowing war, but rather that in contrast to historical research at the time, they did not undertake their study decades or even centuries after the fact: "here finally human reason has recognized that this judgment [of war] is the high and difficult task not only of 'future generations.'" ²¹⁹ Nonetheless, the commissioners in the end remained dissatisfied with their retrospective approach to the study of war. Having "seen all the horrors of war except the battles themselves," as Dutton put it²²⁰, the commissioners mused that it would be preferable to establish a permanent commission of inquiry to accompany "the belligerent armies [...] during war" and "foresee offences, instead of condemning them after they had taken place."²²¹

Against the background of these general reflections about the spatial and temporal aspects of "war" and knowledge in the work of the Balkan Commission, in the remainder of this section I want to explore the workings of European modernity as a uniquely privileged spatio-temporal location from which to know about and take action against war. In the primary sources pertaining to the Balkan Commission, one finds "Europeans who are searching for the truth"²²² about the Balkan wars as well as "peasants [who] were telling the truth."²²³ Yet while the commissioners readily assumed for themselves, as "European" truth-seekers, the ability to recognize when

²¹⁸ Cf. CEIP European Office Records, Box 132, Folder 132.2, Letter Lucien Le Foyer to D'Estournelles, 19 October 1913; CEIP Archive, Vol. 198, Letter of Prudhommeaux to Haskell, 25 October 1912; CEIP Archive, Letter Prudhommeaux to Haskell, 25 October 1912; CEIP Archive, Letter Haskell to Prudhommeaux, 30 October 1912; CEIP Archive, Vol. 199, Letter Butler to d'Estournelles, 2 December 1912; CEIP Archive, Vol. 200, Letter Butler to D'Estournelles, 21 July 1913; CEIP Archive, Letter d'Estournelles to Butler, 1 August 1913; CEIP Archive, Letter D'Estournelles to Carnegie, 15 September 1913.

²¹⁹ CEIP Archive, Vol. 123, Korrespondenz des Verbandes für Internationale Verständigung, "The Carnegie Balkan Commission," 20 September 1913. Since some of the commission's critics faulted the commission for not having arrived to the Balkans "when it was still time to observe the actual facts" (CEIP Archive, Vol. 200, Chronos, "The Carnegie Commission," 15 August 1913), the commissioners stressed the fact that they had arrived to the Balkans "as soon as hostilities were concluded" (CEIP Archive, Vol. 123, Letter Butler to Carnegie, 25 October 1913).

²²⁰ CEIP Archive, Vol. 121, Letter Dutton to Butler, 20 September 1913.

²²¹ CEIP, *Causes and Conduct of the Balkan Wars*, 234.

²²² CEIP Archive, Vol. 200, Letter D'Estournelle to Butler, 6 September 1913.

²²³ CEIP, *Causes and Conduct of the Balkan Wars*, 100f.

truth was told to them, they generally did not believe that the “peasants” on whose truth-telling their work relied possessed the faculties necessary for recognizing the truth of their own accounts. As I have argued in section 1 of this chapter, in the commission’s preferred formulation of the problem of war, the citizens of the Balkan countries were not part of the solution to this problem, and as I have shown in section 2, the form of the commission of inquiry contributed to this exclusion. To pursue this line of argument further, I here examine the commission’s presuppositions regarding who could and who could not recognize and take responsibility for true knowledge about war. To begin with, I delineate the figures of the “European” truth-seeker, the “peasant” truth-teller, and the “foreign” or “international” truth-teller. Thereupon, I recast the hierarchical ordering of these three figures in light of the assumption that European-modernity was a unique spatio-temporal location from which to achieve and responsibly handle knowledge. I point out how the CEIP’s universalist-civilizational understanding of European modernity denied the citizens of the Balkan states epistemological and ethical agency, and I examine how this paradigm reverberated in the commission’s work: in the decision to use the knowledge gathered about the Balkan wars exclusively for the purpose of educating international public opinion, in the difficulty of maintaining what Stoler has called a “studied ignorance” towards the neither European nor modern truth-tellers the commissioners encountered²²⁴, and in the challenge of rendering the Balkan wars examples of at once European modern and not-European-modern war. The section concludes with a final few working hypotheses.

As for the “European” truth-seekers, d’Estournelles claimed to “have chosen the best men it was possible to choose for such a difficult and ingrate work.”²²⁵ These were “men of eminent moral and intellectual virtues,”²²⁶ qualities which in turn rested on the commissioners’ “experience,” “conscience,” and “responsibility.”²²⁷ Butler

²²⁴ Stoler, *Along the Archival grain*, 101, *passim*.

²²⁵ CEIP Archive, Vol. 200, Letter d’Estournelles to Carnegie, 15 September 1913.

²²⁶ CEIP Archive, Vol. 200, Letter d’Estournelles to Butler, 1 August 1913.

²²⁷ Cf. CEIP Archive, Vol. 201, Letter d’Estournelles to Butler, 24 November 1913.

formulated the prerequisites required of the “European” truth-seekers slightly differently: he was concerned that the commission would consist of “trained and disinterested observers.”²²⁸ While the mark of “trained men”²²⁹ was that they possessed academic degrees from Western European or US-American institutions and “technical qualifications” such as being able to speak “Balkan languages,”²³⁰ “disinterested observers” were those who had “only the highest interests of humanity to serve.”²³¹ In the example of the commission, experience or training on the one hand, and conscience, responsibility, and disinterestedness on the other were not so much the preconditions of truth in the abstract²³² but, first and foremost, the prerequisites of knowledge practices such as direct observation and scientific writing.²³³ In turn, when “[m]en of great worth and of the sincerest good will” engaged in these knowledge practices to conduct their inquiries, “[t]hese words, truth, independence and disinterestedness” were actualized and hence were no longer “vain words.”²³⁴ Thus, it was through capable subjects of knowledge such as the commissioners that epistemic ideals and practices produced each other.

In their quest for knowledge about the Balkan wars, the “European” truth-seekers interacted with two kinds of witnesses or truth-tellers. The first kind were “peasants” as well as “plain people, such as shop-keepers, workmen, private soldiers, and others.”²³⁵ Presumably, these witnesses spoke the truth because they were incapable of

²²⁸ CEIP Archive, Vol. 200, Letter Butler to d’Estournelles, 7 October 1913.

²²⁹ *Ibid.*

²³⁰ CEIP Archive, Vol. 200, Letter Butler to d’Estournelles, 21 July 1913.

²³¹ CEIP Archive, Vol. 200, Letter Butler to d’Estournelles, 7 October 1913.

²³² Though cf. CEIP Archive, Vol. 201, Letter d’Estournelles to Butler, 27 November 1913.

²³³ Consider once more, for instance, Butler’s claim that “this is the first time that *trained men* have ever gone into territory war has devastated and studied its moral, economic and social [word missing] by the inductive *method of observation*” (CEIP Archive, Vol. 200, Letter Butler to d’Estournelles, 7 October 1913, my emphasis; for further examples, cf. CEIP Archive, Vol. 201, Letter d’Estournelles to Butler, 24 November 1913; CEIP, *Causes and Conduct of the Balkan Wars*, 11).

²³⁴ CEIP, *Causes and Conduct of the Balkan Wars*, 5.

²³⁵ CEIP Archive, Vol. 200, Letter Butler to d’Estournelles, 31 July 1913. This was another inventive aspect within the commission’s work. Originally, the commission had been intended to “conference with leading personalities and with representative persons,” and the idea of talking to “plain people” was more of an afterthought to this (CEIP Archive, Vol. 200, Letter Butler to d’Estournelles, 21 July 1913).

lying: "It was impossible to doubt that these peasants were telling the truth. Most of them were villagers, simple, uneducated, and stunned by their sufferings, and quite incapable of invention."²³⁶ Hence, these witnesses were unable to recognize the truth or falsity of their own accounts not only because they had not been "sufficiently removed from the events to judge them fairly"²³⁷ but also because of their lack of what the commissioners thought of as "moral and intellectual virtue." And when the commissioners did encounter "plain people" who seemed to possess what, in "Europeans," would have been considered such virtues, these faculties were taken as the exception that proved the rule.²³⁸ Since the "peasants" were deemed to be unable to take responsibility for the truth of their accounts, "the Commission assumes responsibility, in the sense that it believes that the witnesses told the truth; and, further, that it took every care to ascertain by questioning them whether any obvious excuse [...] could be adduced."²³⁹

The other kind of witness were "foreigners," who were generally considered to be "reliable"²⁴⁰ and "honest"²⁴¹ and whose testimonies were far more valuable than those of the "peasants." Not only did the commission take "as a point of departure of its work" the newspaper articles "published by an elite of European and American travellers who have followed the events on site,"²⁴² the commissioners also relied heavily on testimonies given to them by "foreign" witnesses.²⁴³ Furthermore, "foreigners" were often asked to vouch for the truth of testimonies given by "peasants." For example, "a confidential statement made to us by an American gentleman" – who was "a cautious and fair-minded man, with a long and intimate experience of Macedonia" – was able to confirm the "inevitably biased and

²³⁶ CEIP, *Causes and Conduct of the Balkan Wars*, 100f.

²³⁷ *Ibid.*, 145.

²³⁸ "Anastasia Pavlova, an elderly woman of the middle class, [...] told her painful and dramatic story with more intelligence and feeling than most of the peasant witnesses" (*ibid.*, 102).

²³⁹ *Ibid.*, 103; cf. 138.

²⁴⁰ *Ibid.*, 102.

²⁴¹ *Ibid.*, 75.

²⁴² CEIP Archive, Vol. 200, D'Estournelles, "Une Mission de la Dotation Carnegie," 18 August 1913.

²⁴³ E.g., CEIP, *Causes and Conduct of the Balkan Wars*, 102f.; 117; 133; 188.

exaggerated” testimonies of the Turkish and Greek inhabitants of a town in which a particularly brutal massacre had occurred.²⁴⁴ Unlike that of “peasant” witnesses, these “foreigners”’ ability to recognize and take responsibility for the truth of their testimonies was not hampered by the fact that they had directly experienced the war, not even when they had been victims of the atrocities about which they were then asked to testify. However, they were nonetheless not as capable subjects of knowledge as the commissioners themselves – for in comparison to these, they were no longer an elite, but became the “usual suspects, the journalists or the travellers without any particular authority.”²⁴⁵

This hierarchical ordering of truth-seekers and truth-tellers according to their ability for recognizing and taking responsibility for truth was based on a version of what Shilliam refers to as the “twofold delineation of the modern condition (and its associated ethos)” in “what might be termed the ‘European-modern’”²⁴⁶:

“First, temporally speaking, pre-/yet-to-be-modern subjects are assumed to be unable to adequately dialogue with their modern interlocutors; however, the latter can provide the more universal meaning of the former’s condition and thus prescribe techniques through which they might cultivate a sufficient ethical adeptness. Second, in terms of spatiality, because modernity is assumed to have gestated within European history, it is European ancestry – the more intimately ‘white’ the better – that marks the authentic community of interlocutors.”²⁴⁷

Developed as a critique of the contemporary Western academy, Shilliam’s formulation of “European-modernity” as a purportedly privileged and unique spatio-temporal location from which to responsibly know, judge, and communicate also resonates with the example of the Balkan Commission. The commissioners deemed the citizens of the

²⁴⁴ *Ibid.*, 75. In another instance, “the testimony of this Russian doctor entirely confirms that of our Bulgarian peasant witnesses” (*ibid.*, 89).

²⁴⁵ CEIP Archive, Vol. 200, Letter d’Estournelles to Butler, 1 August 1913.

²⁴⁶ Robbie Shilliam, “Decolonising the Grounds of Ethical Inquiry: A Dialogue between Kant, Foucault and Glissant,” *Millennium: Journal of International Studies* 39, no. 3 (2011), 649-665.

²⁴⁷ *Ibid.*, 650f.

Balkan states whose testimonies they heard to be not yet “civilized.”²⁴⁸ As Hansen explains, the commission’s understanding of civilization was a universalist one in which several civilizations coexisted in the world, but only the European/US-American civilization could lay claim to being modern and “truly civilized.”²⁴⁹ The Balkans were not European-modern and in this sense not civilized, but “primitive”²⁵⁰: “these countries, not far from us, were then, and are still, unlike Europe, more widely separated from her than Europe from America.”²⁵¹ Yet insofar as it was possible to think of the Balkans as a part of Europe²⁵², their difference from European-modernity was not a natural or innate one.²⁵³ Rather, their inhabitants’ “backwardness”²⁵⁴ was due to “the historical conditions”²⁵⁵ – the fact that during the Ottoman Empire’s rule over the Balkans, peoples’ “minds have been molded for centuries by the law of reprisal and the practice of vengeance [and] tend to a common level of degradation.”²⁵⁶ This made for a backwardness that could in principle be overcome: the citizens of the Balkan states were not yet modern and not yet European, but if their breaking free from the Ottoman Empire could be maintained, and if their new “patrons, the Great Powers of Europe,” gave them “roads, and railways, and waterways, schools, laboratories, museums, hospitals and public works,”²⁵⁷ they could become civilized and European-modern. For the moment, however, their lack of civilization meant that

²⁴⁸ As just one indication of the extent to which civilizational thinking underlay the commission’s work, see the first draft of Dutton’s chapter of the report. In redactions towards the conclusion of the chapter, the term “civilisations” is crossed out and replaced by “populations” (CEIP European Center Records, Box 10, Folder 10.2, Dutton, *Manuscript Traduit, 1er texte*), which was again redacted so that the published report ultimately spoke neither of “civilisations” nor of “populations,” but of “the bearing of international law upon [...] the treatment of people” (CEIP, *Causes and Conduct of the Balkan Wars*, 272).

²⁴⁹ Hansen, *Security as Practice*, 90.

²⁵⁰ CEIP, *Causes and Conduct of the Balkan Wars*, 265.

²⁵¹ *Ibid.*, 3. Cf. CEIP Archive, Vol. 200, Letter D’Estournelles to Carnegie, 15 September 1913.

²⁵² E.g. CEIP Archive, Vol. 121, Letter Dutton to Butler, 5 January 1914.

²⁵³ Cf. Hansen, *Security as Practice*, 90, cf. 151.

²⁵⁴ CEIP, *Causes and Conduct of the Balkan Wars*, 270.

²⁵⁵ *Ibid.*, 77.

²⁵⁶ *Ibid.*, 77f.; cf. CEIP Archive, Vol. 121, Letter Dutton to Butler, 7 November 1913: “You have in the Balkan States a group of nations which are very backward, which are hampered by much bigotry and ignorance, and which have suffered for centuries by the cruelty and outrages practiced upon them by the Turks.”

²⁵⁷ CEIP, *Causes and Conduct of the Balkan Wars*, 19.

the “peasants” and “plain people” who the commissioners encountered were incapable of recognizing, let alone taking responsibility for the truth of their accounts of the Balkan wars. Instead, this task fell to the squarely European-modern commissioners.

Although the universalist-civilizational worldview of the commission and the CEIP in general entailed that the most advanced civilizations had a responsibility towards those who were less civilized²⁵⁸, helping those who had suffered during and after the Balkan wars was at best a secondary purpose of the CEIP’s initiative. Originally, the commission had planned to recommend a further conference which would address the problem of war in the Balkans, but because of the deteriorating international situation, this idea remained unrealized.²⁵⁹ The commissioners had also been meant to “assist each government in repairing [the problems caused by war], by making known by your report the real aims and resources of the country,”²⁶⁰ yet the available primary sources contain hardly any further mention of this idea. The commission did not consider educating public opinion in the Balkan states about the problems of war – instead, it was exclusively concerned with public opinion in the “civilized” world. When Dutton, the US-American member of the commission, suggested that to enhance the chance of peace in the region, measures should be taken to educate the governments and the citizens of the Balkan states about the problem of war, this proposal went largely unheeded.²⁶¹ Nor was the CEIP willing to take on a humanitarian role in alleviating the plight of those whom the wars had left without

²⁵⁸ “Any sound theory of the Peace Movement must agree to the idea that the world is one and that those portions which are most civilised have a duty and an obligation to try to protect, redeem, and help those who are, by no fault of their own, surrounded by suffering and death” (CEIP Archive, Vol. 121, Letter Dutton to Carnegie, 7 November 1913; cf. Hansen, *Security as Practice*, 91).

²⁵⁹ Cf. Kévonian, “L’enquête,” 37. This conference was probably what d’Estournelles had in mind when he wrote to Butler: “I am sure that in the report of the Carnegie Endowment there will be found very valuable and new elements for the improvement of the Balkanic situation and future prospects” (CEIP Archive, Vol. 200, Letter d’Estournelles to Butler, 5 September 1913; cf. CEIP Archive, Vol. 121, Letter Dutton to Butler, 4 June 1914).

²⁶⁰ Letter D’Estournelles to commission, 21 August 1913 (CEIP, *Causes and Conduct of the Balkan Wars*, 8).

²⁶¹ CEIP Archive, Vol. 121, Letter Dutton to Butler, 5 January 1914; CEIP Archive, Vol. 123, Letter Dutton to Butler, 4 June 1914.

shelter, food, and medical assistance.²⁶² To return to Shilliam's concept of the European-modern, while the commissioners clearly aspired to assign universal meaning to the observations they had made in the Balkans, they were not concerned with improving the condition, epistemological or otherwise, of the people they encountered.

Instead, the commission's main purpose in inquiring into and disseminating knowledge about the Balkan wars was to educate "international" public opinion – a European-modern audience at home in what were considered to be the most internationally influential countries – about the problem of war as well as about the CEIP's contribution to the cause of peace. In order to achieve this central aim, the commission's work had to successfully meet two challenges ensuing from the idea of European-modernity.

First, the commissioners had to reconcile two contradictory demands on their interaction with "peasants": they had to simultaneously keep their distance from and closely interact with these truth-tellers.²⁶³ The force of the knowledge the commissioners sought to produce and disseminate depended on their credibility towards their main target audience, which in turn depended both on the degree to which the commissioners were able to affirm their status at the top of the hierarchy of truth-seekers and truth-tellers and on the degree to which they managed to approximate the epistemological ideal of direct observation. This put conflicting demands on the commissioners: on the one hand, they had to safeguard "the distinction of being a scholar,"²⁶⁴ and for the knowledge they produced to be true, it had to depend as little as possible on "peasant" truth-telling. On the other hand, the commissioners' research *sur place* would have been impossible without the help of

²⁶² This was another proposal by Dutton which, however, was rejected by Butler because it fell outside the CEIP's area of work.

²⁶³ The contradiction bears some similarities to the one Stoler has described for the agents of the Dutch empire in Batavia, "whose status in the colonial hierarchy was founded as much on their display of European learning as on their studied ignorance of local knowledge" (Stoler, *Along the Archival Grain*, 101).

²⁶⁴ CEIP, *Causes and Conduct of the Balkan Wars*, 7.

local “travel companions,”²⁶⁵ and the truth claims their final report made inevitably relied at least in part on the “intimate and profound knowledge of local conditions”²⁶⁶ which only “peasant” truth-tellers could offer. The contradiction between these two demands is exemplified by the frequent criticism of Milioukoff, the Russian member of the commission, as partial.²⁶⁷ While his background and linguistic knowledge – “Professor Milioukov [...] not only knows the Balkan nations thoroughly, but their languages as well” – enhanced the commission’s ability to base its knowledge claims on direct observations, Milioukoff “has been reproached” for this knowledge.²⁶⁸ In sum, as European-modern subjects of knowledge, too much access to “peasants” would have made the commissioners unconvincing to their target audience because it would have made them suspicious of partiality. Yet without access to “peasant” knowledge, the commissioners would have been unconvincing to their target audience because their knowledge of war would have lacked the element of direct observation.

A second challenge for the commissioners consisted in having to frame the Balkan wars as examples of at once European-modern war and “uncivilized” war. On the one hand, in order for the commissioners to achieve their aim of influencing public opinion in the West, they had to render the Balkan wars examples of “just what is or may be involved in an international war carried on under modern conditions,” to show “the shocking horrors which modern warfare entailed”²⁶⁹ and thereby expose “the nature

²⁶⁵ Cf. *ibid.*, 126; CEIP Archive, Vol. 121, Letter Dutton to Butler, 20 September 1913.

²⁶⁶ CEIP, *Causes and Conduct of the Balkan Wars*, 145.

²⁶⁷ Impartiality was one of the stated goals of the commission, and a lack of impartiality one of the most frequent points of criticism against it (cf. *ibid.*, Preface; CEIP Archive, Vol. 200, D’Estournelles, “Une Mission de la Dotation Carnegie,” 18 August 1913; CEIP Archive, Vol. 39, Letter Butler to North, 2 September 1913).

²⁶⁸ CEIP, *Causes and Conduct of the Balkan Wars*, 7. Another example is that of a certain Professor Prince, who had turned down the request to become a member of the commission, and of whom d’Estournelles wrote to Butler: “I am not sorry, however, that Professor Prince is not with the Commission, for his knowledge of the languages and of the country might have increased the difficulties of the Commission if he had been objected to by this or that element” (CEIP Archive, Vol. 200, Letter d’Estournelles to Butler, 10 September 1913).

²⁶⁹ CEIP, *Causes and Conduct of the Balkan Wars*, Preface. To “illustrate all the disasters which a great modern war causes” had already been the idea behind the proposal of the French Peace Societies (CEIP Archive, Vol. 198, Letter Prudhommeaux to Haskell, 22 October 1912).

of war itself in modern times.”²⁷⁰ Yet on the other hand, the Balkan wars were fought between countries and people whom the commissioners and their target audience considered to be not modern and not fully European. Even the First Balkan War – which, as I have discussed in section 1 of this chapter, was commonly seen as a “war of liberation” by means of which the Balkan countries had freed themselves from the oppression of the Ottoman Empire – in the end lend itself to being deemed “uncivilized,” too: “On a close view [...], this War of Liberation assumes a more sordid and familiar aspect. It unleashed the accumulated hatreds, the inherited revenges of centuries.”²⁷¹ The commission sought to meet this challenge in several ways. Firstly, the commissioners distinguished between two causes of excessive war-time violence. While some of the most “extreme barbarity” was attributed to “local circumstance” or said to have “its root in Balkan history,” the majority of instances of excessive violence were deemed to be due to the fact that “the essence of [modern] war” was to “suspend the restraints of civil life.”²⁷² Secondly, the commissioners claimed that “some of the combatants and some of the civil officials” had tried to adhere to the “European ideal of humanity.”²⁷³ This ambiguous casting of the Balkan states’ soldiers and government officials as potentially, but not yet actually European-modern allowed for making the Balkan wars into examples of both “uncivilized” and “modern” war. Finally, the commissioners emphasized how the Balkan wars had ruined what budding beginnings of European-modernity there had been in the Balkan countries. One particularly interesting example of this is a report on how the war had “utterly destroyed” a school’s “physical, chemical, and zoological laboratories equal, if not superior, to any others in that region.”²⁷⁴ Following this line of reasoning, war was in conflict with modernity, and in particular with the modern tools of knowledge which the commissioners were so eager to apply to the study of war.²⁷⁵

²⁷⁰ CEIP Archive, Vol. 121, Letter Dutton to Butler, 4 June 1914.

²⁷¹ CEIP, *Causes and Conduct of the Balkan Wars*, 71.

²⁷² *Ibid.*, 108.

²⁷³ *Ibid.*

²⁷⁴ *Ibid.*

²⁷⁵ Cf. Akhund, “The two Carnegie reports.”

Wrapping up, how did the understanding of European-modernity underlying the commission's work and the hierarchy of subjects of knowledge it produced relate to the commission's formulation of the problems of war? Rather than deriving additional working hypotheses, the foregoing discussion can serve to refine a few previously conceived ones. First, insofar as the commission generally preferred rational to dialectical understandings of war, it ought to be clarified that understanding war as a European-modern problem did not necessarily imply understanding it in the rational terms of the commission. Nor did war as a European-modern problem have to be addressed through the commission's chosen means of conducting an international inquiry into wars that took place elsewhere. A good example of this is the aforementioned Marxist formulation of the problem of war suggested by Bérard, who likened the Balkan Wars to the French Revolution of 1789 and the Paris Commune of 1871. While this comparison implied that the Balkan wars were examples of modern war insofar as they were examples of class conflict and sought to overcome and replace oppression, in the same letter Bérard also cast the "Balkan people" as yet to be civilized:

"I do not see what the [CEIP] can have to inquire in these religious and social struggles [the Balkan wars]. I am convinced, in particular, that such an inquiry can only let burst the bubble of a renewed Balkan war, in that it revives and excites the hatreds [...]. If we want, in the eyes of the Balkan people, to have our role as civilized older brother, we must work with all our forces towards the progressive eradication of these hatreds, and not towards their maintenance."²⁷⁶

If one wanted to conduct an inquiry, Bérard argued, one ought to conduct it into the "brutalities no less revolting" which happened in Europe as well as in Europe's imperial dominions: "I am of the opinion that prior to inquiring into the others, we must inquire at home [*chez nous*] and, above all, we need to publish at home the results of these inquiries."²⁷⁷ The general point to be made here is that the rational and the

²⁷⁶ CEIP Archive, Vol. 200, Letter Bérard to d'Estournelles, 18 August 1913.

²⁷⁷ *Ibid.*

Marxist problematization of war differed in terms of the spatio-temporal relationship they assumed between the problem of war and knowledge about war, yet were similarly founded upon civilizational assumptions about European-modernity as a privileged spatio-temporal location from which to take action against war.

Earlier parts of the chapter have also alluded to the fact that the citizens of the Balkan states were not deemed to have any agency or responsibility in the problem of war and its solution, and have discussed how, in the same move with which the Balkan Commission claimed authority in anti-war politics for an emerging international civil society, it excluded the citizens of the Balkan states from these politics. What the discussion in this part of the chapter has added to this is a detailed delineation of how this exclusion from agency, responsibility, and political authority worked within the commission's approach of problematizing war by producing and disseminating knowledge about it. Based on a universalist-civilisational understanding of European-modernity, this exclusion was realized by differentiating purportedly capable from purportedly incapable subjects of true knowledge and amounted to denying the Balkan countries' citizens the practical capacity to recognize and take responsibility for the truth of their own accounts of the wars.

Conclusion

This chapter has analyzed the Balkan Commission as a first example within this thesis' genealogy of the problematization of war in international politics. The chapter's first purpose has been to reconstruct how the problematization of war is configured in the primary sources. To this end, I first delineated two kinds of formulations of the problem of war to be found in these sources. On the one hand, and as espoused by the commissioners and the CEIP, what I refer to as rational formulations posed the problem of war to be one of deviance from a behavioural – a legal, economic, or moral – norm, and as corrigible or soluble. Within this category, the legal problem of war lay in instances of war-time violence which violated written rules of international law; the

economic problem of war resided in war's violent destruction of wealth, or of human lives and material resources; and finally, the moral problem of war consisted not merely in the moral wrongness of violence but also, and more importantly, in the psychological consequences of war-time violence for perpetrators and victims, individually and collectively. On the other hand, and as repudiated by the commissioners and the CEIP, dialectical formulations rendered war part of a larger problem to whose transcendence war could in turn contribute. Thus, in what I have labelled a Marxist formulation, war was expressive of class struggle, whereas in a Hegelian formulation, war, as a dialectic of the "intoxication" of battle and the "revolt" against this intoxication, was a driver of progress.

In the second main part of the chapter, I attended to what, for short, I have sometimes referred to as the will to knowledge about war. Here, I firstly wondered about the form of the commission of inquiry. I sketched this form's general history in domestic, inter-state, and international politics, and I discussed its particular history in the example under study: how the CEIP decided to initiate a commission of inquiry and how the Balkan Commission, as an instantiation of the historically emergent form of the commission of inquiry, both reproduced and reinvented this form for the purpose of an international politics of problematizing war. Secondly, I broke down the commission's methods for gathering material and drawing inferences into discreet knowledge practices and showed how these practices congealed into different ways of knowing war. Thereafter, I briefly alluded to the social, material, and ideational preconditions of the commission's knowledge practices and ways of knowing. Finally, I reconstructed how the commission's knowledge practices and ways of knowing came together with the three main problems of war which the commission sought to put forth.

The third main part of the chapter addressed how, in the example of the Balkan Commission, the problematization of war was spatially and temporally configured. After pointing out some of the general aspects of this configuration, I examined the commission's presuppositions regarding who could and who could not recognize and

take responsibility for true knowledge about war. I traced a hierarchy of “European” truth-seekers, “foreign” truth-tellers, and “peasant” truth-tellers, and I pointed out how this hierarchy was constructed upon an assumption of European-modernity as a unique spatio-temporal location from which to seek and speak truth. Finally, I discussed the contradictory demands which this assumption of European-modernity created for the commissioners if they were to be convincing to their audience: they had to simultaneously maintain their distance from and closely interact with the “peasant” witnesses they encountered, and they had to engage the Balkan Wars as examples of both “modern” and “uncivilized” war.

The chapter’s second purpose has been to experiment with what it might mean to practice genealogy as history/critique and problematization. As I have argued in Chapter 2, genealogy achieves its critical aims by providing historical materials that allow for recognizing and experimenting with an existing problematization’s inherent limitations and blind spots. In furtherance of this argument, in this chapter I have experimented with a specific practice of thinking, namely the practice of formulating working hypotheses. The working hypotheses with which I have concluded each of this chapter’s main sections are, on the one hand, meant to present some of the main upshots of the historical analysis in a form that enables, indeed prompts us to get to work on our contemporary ways of knowing about and taking action against war. On the other hand, these working hypotheses are not merely meant to provide historical materials: rather, they are an attempt to already begin the work on our knowledge practices that the genealogy presented by this thesis seeks to invite. As I will further explain in the reflective vignette following this chapter, the hypotheses I have offered, rather than working to create distance between myself and the object of my analysis, seek to make of genealogy as history/critique and problematization a critical praxis of changing our ways of knowing – of changing the objects, practices, and subjects of knowledge, and of changing the relationships between them.

With this in mind, let me now try to bring some order to the working hypotheses I have proposed over the course of the chapter. To start, there are two overarching

points to be made. First, the Balkan Commission is an example of the co-production of several aspects of the problematization of war in international politics: in the commission's work, war all at once became this-worldly, empirically knowable, and an addressable and potentially soluble problem for an international civil society which was just beginning to claim authority in matters of international politics. At the time of the Balkan Commission, none of the individual elements of this take on war was taken for granted. Moreover, then as now, it is difficult to think of any one of these elements independently.

Secondly, in the example of the Balkan Commission's work, the problematization of war emerged in a number of contexts which were themselves emergent. In the context of liberalism as both a current of political thought and a political movement, there was a shift from a concern with unfreedom to a concern with violence. In international law, an understanding of war as violating international law was slowly replacing an understanding of war as a legitimate if unfavourable means of international statecraft. Within this replacement, there remained the question of whether it was preferable to legally problematize war *per se* or excessive war-time violence, and it was all but clear what this legal problematization of war could or should look like – whether, for instance, it should take the form of a criminalization. Academic disciplines, technical instruments, and philosophies of knowledge were developing, making new practices and ways of knowing available. Finally, the assumption of European modernity as a privileged spatio-temporal location in and from which to know and to take action on one's knowledge was also an ever-emergent context.

With these two overarching points in mind, the chapter generated a number of working hypotheses about the problematization of war in the example of the Balkan Commission and about this problematization's main elements – the practices through which it was produced, the preconditions which made it possible and which, in turn, it reproduced, and the constitutive exclusions which made this problematization what it was.

(1) The Balkan Commission produced war as a rationally structured problem, or a problem of corrigible deviance from a behavioural norm, to the exclusion of dialectically structured problems of war.

This implied that the commission problematized exactly that aspect of war as deviant/corrigible which, in dialectical formulations of the problem, made for the possibility of transcendence.

(2) The Balkan Commission produced an array of forms, practices, and ways of knowing war empirically, to the exclusion of metaphysical approaches to knowing war.

One might say that this will to experience-based knowledge about war was blind towards exactly those aspects of war which it deemed to be the most problematic: in those instances in which war-time violence itself turned out to be “unobservable” and “unwritable,” the commission instead turned to empirical considerations of war’s causes and effects.

(3) In the move with which it claimed political, epistemic, and moral authority in questions of war for an emerging international civil society, the Balkan Commission excluded the Balkan states’ governments and citizens from this authority and this society – and simultaneously excluded itself from the various problems of war it had formulated.

What to make of these hypotheses? For one, we could also note that none of the constitutive exclusions of the ways in which the Balkan Commission made war into an epistemic and actionable object were fully conclusive. In spite of their overall preference for rational formulations of the problem of war, the commissioners did not fully repudiate or abandon dialectical formulations. Nor did the commission’s endeavour to know war empirically entirely avoid metaphysical elements.

Moreover, there are many ways in which we could line up and organize these different hypotheses. For instance, the rational structuring of the problem at stake was facilitated by the form of the commission of inquiry (insofar as commissions of inquiry had long been instruments for recognizing and correcting deviance), the knowledge

practices of direct observation and of writing (insofar as it was through these practices that deviant war-time behaviour was rendered observable and describable, and insofar as these practices required a subject of knowledge to be external to the problem to be observed and described), and the context of European modernity (which provided for the distinction between capable and incapable, responsible and irresponsible subjects of knowledge). Yet this is only one example of how the working hypotheses produced by this chapter could be organized. In the end, the co-production of the different elements of the problematization of war implies that each hypothesis could be made to subsume the others.

Ultimately, both of these points return us to genealogy as a specific way of conducting history/critique and problematization. Through rendering historical our contemporary problems, the practices through which these problems are produced as knowable and actionable, and the preconditions that enable these practices, genealogy constitutes a critical praxis of clarifying, intensifying, and getting to work on our problematizations without, however, telling us what this work should consist in or what change exactly it should aspire to. It is in this reflexive and open-ended sense that the historical materials provided in this chapter are meant to allow for, indeed invite and urge further work on our contemporary ways of knowing and addressing war.

Out of the many directions in which this chapter's analysis of the Balkan Commission points us, the remainder of the thesis can only take up but a few. Therefore, in the next two chapters, I focus on the emergence of war as a legal problem, in particular as a crime. In addition, I use the chapters to experiment with two further knowledge practices of mine which, in fact, have been flagged up in this chapter's analysis of the Balkan Commission: practices of looking and practices of writing. Before I get to this, however, a first reflective vignette will briefly explain the working hypotheses offered in this chapter as a way of "doing differently" our practices of thinking.

Reflective vignette 1

On practices of thinking

One of my purposes in the preceding analysis of the Balkan Commission's work has been to ponder what exactly conducting a genealogy might consist in. How to conduct genealogical research in a way that brings thought to bear on itself and enables us to learn how it might be possible to think differently? To begin to work out an answer to this question, in the preceding chapter I have experimented with a practice of thinking which has had quite a central place both in my studies in political science and in my work in applied peace and conflict research: the practice of formulating working hypotheses.¹

As Patrick Jackson argues, the practice of formulating hypotheses to be falsified by means of empirical evidence constitutes "a well defined intellectual operation" – or, in the terminology of this thesis, a knowledge practice – especially within neopositivist IR.² Certainly, this practice has already received its share of criticism – be it on account of its inappropriateness in the kinds of post-atrocity situations that, for instance, transitional justice seeks to deal with³, its inapplicability in social-scientific research pursuing interpretive or critical purposes⁴, its dominant and largely taken for granted

¹ Studying political science at a German university, how to formulate *ceteris paribus* hypotheses was one of the most important lessons to be learned during my first year of study. The only comparably central practice that comes to mind is that of specifying and operationalizing independent and dependent variables. To be clear, nothing in the primary sources suggests that the Balkan Commission formulated or tested causal hypotheses – and given that that practice's history from Descartes via the Vienna Circle to Popper (cf. Jackson, *Conduct of Inquiry*, 44-59), this is hardly surprising: at the time of the Balkan Commission, the practice as it exists today had simply not yet been invented.

² *Ibid.*, 8; cf. Laura Shepherd, "Activism in/and the Academy: Reflections on 'Social Engagement,'" *Journal of Narrative Politics* 5, no. 1 (2018), 45-56, at 47.

³ Within the literature on transitional justice, arguments in favour of hypothesis-testing, falsification, and the generalizations these enable (e.g. Chapman, Ball, "Truth of Truth Commissions") have been met with counter-arguments emphasizing the importance of adopting a "posture of faith" towards survivors' testimonies (Orford, "Commissioning the Truth," 858).

⁴ Cf. Jackson, *Conduct of Inquiry*, 42f.; Dvora Yanow, "Neither Rigorous Nor Objective? Interrogating Criteria for Knowledge Claims in Interpretive Science," in Dvora Yanow, Peregrine Schwartz-Shea

status in IR and adjacent disciplines⁵, or the fact that it is a “stylized” practice which no one “actually follows.”⁶ To these criticisms, I would like to add two points.

First, the practice of formulating hypotheses is political in more ways than we usually think. Critics have rightly pointed to its disciplining and disciplinary effects – to how, in IR as in the social sciences more generally, the formulation and testing of hypotheses are associated with neopositivist claims to “science” as exclusively concerned with the production of law-like generalizations about causal relationships. In addition, however, the practice’s politicality also lies in how it helps produce us in relation to the objects of our knowledge, and these objects in relation to us. If, as Jackson argues, “[m]ind-world dualism enables hypothesis-testing, insasmuch as testing a hypothetical guess to see whether it corresponds to the world makes little sense in the absence of a mind-independent world against which to test that hypothesis,”⁷ then it is the practice of formulating and testing hypotheses that puts into action the Cartesian split between the subject and the object of knowledge. In this way, the practice of formulating hypotheses works to distinguish and distance the knower from the known.

Secondly, we could do more to counter the practice of formulating hypotheses in practical terms. For want of proposals for alternative practices of thinking, Jackson notes, critically minded scholars still often end up succumbing to “the seemingly reasonable offer to being taken seriously [...] as long as they formulate testable hypotheses.”⁸ (I have once been made this offer this, too: that I could hold whatever epistemological commitments I fancied so long as I rendered my research into the form of a few hypotheses.) Hence, I decided to engage in practical experimentation to ask: Supposing that it were no longer intended to produce knowledge in the form of law-

(eds.), *Interpretation and Method: Empirical Research Methods and the Interpretive Turn* (London, UK: M.E. Sharpe, 2006), 67-88, at 68ff.

⁵ Cf. Jackson, *Conduct of Inquiry*, 43.

⁶ Friedrichs, Kratochwil, “On Acting and Knowing,” 710.

⁷ Jackson, *Conduct of Inquiry*, 42.

⁸ *Ibid.*, 8, 43.

like generalizations about causal relationships, and the knowledgeable subject as fully external to the object of their knowledge – what could the formulation of working hypotheses instead amount to?

My answer to this question once more takes its inspiration from Foucault, who once claimed that the aim of his work was

“to open up a space of research, try it out, and then if it doesn’t work, try again somewhere else. On many points [...] I am still working and don’t yet know whether I am going to get anywhere. What I say ought to be taken as ‘propositions,’ ‘game openings’ where those who may be interested are invited to join in.”⁹

The working hypotheses I have proposed in the previous chapter are intended as such game openings. Unlike the neopositivist kind of hypothesis that calls for being tested against empirical data, these working hypotheses seek to draw us into the analysis, to close the distance between us and the objects of our research. They present the historical materials shed by the chapter’s analysis in a way that, I hope, provokes us to take them up and use them on our ways of knowing about and taking action against war. More generally, they invite us to question the practices of thinking by means of which we conjecture about the world, and to try and change these practices so that they are also conjectures about ourselves. Further unlike neopositivist hypotheses, the previous chapter’s working hypotheses do not tell us how they are to be taken up, or what alternative practices of thinking to engage in precisely. If anything, they hope to be met in a spirit that is the opposite of neopositivism’s falsificationist scepticism and that leads us to formulate a new kind of if-then clause: if these working hypotheses are historically accurate, and if, moreover, they do have a bearing on our present – then what are we to do?

⁹ Michel Foucault, “Questions of Method,” 224. See also Foucault’s “Nietzsche hypothesis” in Michel Foucault, *Society Must be Defended: Lectures at the Collège de France, 1975-1976*, Translated by David Macey (London, UK: Penguin Books, 2004 [1997]), at 46f.). For a critique cf. Borg, “Genealogy as Critique,” 52f. For an IR genealogy providing a similar kind of Nietzschean “Herkunftshypothesen,” cf. Der Derian, *On Diplomacy*, 54.

Within the process of conducting the research that has now become this thesis, the moment in which I cast my findings about the Balkan Commission's problematization of war in the form of working hypotheses was the moment in which, as I put it in the conclusion of Chapter 2, I began to become curious. In that moment, I also imagined that I would engage in this practice in all of my historical chapters, and that the form of the working hypothesis would become a heuristic for the remainder of the thesis. As it turned out, however, what was a useful practice for becoming curious was not so useful for remaining curious – not least because the materials shed by my analysis of the Balkan Commission's work prompted me to get to work on several other practices of mine. But that is a story for the next two chapters and the next two reflective vignettes.

Chapter 4

“Fragments even before they were buried”: War and war-time violence as problems of international law, ca. 1870-1872 and 1920

This chapter has had many beginnings.

At one point, it began with a footnote. Analyzing international jurists’ debates about the Franco-German War, Daniel Marc Segesser mentions that one of the jurists contended to have reached his conclusions about the matter “on the basis of a properly scientific analysis,”¹ and annotates, in a footnote, Gustave Rolin-Jaequemyns’ methodological primer on “the way of appreciating, from the point of view of International Law, the facts of the last war.”² At the time, Rolin-Jaequemyns was one of the instigators behind a concerted move to make international law a profession in its own right: a founding member of the *Institut de Droit International*, Rolin-Jaequemyns belonged to an international group of jurists whom Martti Koskenniemi describes as “amateur sociologists”³ concerned with cultivating what they thought of as “the legal conscience of the civilized world.”⁴ Coming from Belgium, England, France, and Germany, Koskenniemi suggests that for these jurists, “war – the ‘war phenomenon’ – was an enigma”⁵ that could be addressed by “educating European men to develop their sentiments towards peacefulness and moderation.”⁶ Taken together, Segesser’s and Koskenniemi’s secondary accounts and Rolin-Jaequemyns’ methodological manual suggested the undertaking of the jurists debating the Franco-

¹ Segesser, *Recht statt Rache*, 89.

² Gustave Rolin-Jaequemyns, “De la Manière d’apprécier, au Point de Vue du Droit International, les Faits de la Dernière Guerre,” *Revue de Droit International et de Législation Comparée* 4 (1972), 481-525.

³ Koskenniemi, *Gentle Civilizer*, 95.

⁴ *Ibid.*, 11, *passim*.

⁵ *Ibid.*, 83.

⁶ *Ibid.*, 85.

German War as an early historical example of an attempt at empirically knowing and practically addressing war. Hence, I decided to take a closer look.

The chapter also once began with a quest for history. The debates between Rolin-Jaequemyns and his colleagues can be accessed through their published articles, all of which are now available digitally. However, I was eager to conduct what, at that time, I thought of as “proper” historical research, and I was therefore looking for a reason to visit archives and gather unpublished primary sources. It was in this context that, in Mark Lewis’ study of the internationalization of crime and punishment⁷, I came across the Advisory Committee of Jurists, a gathering of ten international jurists who met in The Hague in the summer of 1920 to devise a scheme for a Permanent Court of International Justice. The committee’s members hailed from Brazil, Japan, the United States, and different Western European countries and included legal scholars and practitioners, some of whom also held political offices.⁸ The Advisory Committee of Jurists had taken up its work at the request of the League of Nations, and the League’s archive still holds many of these jurists’ materials. The committee’s debates centrally revolved around how the to be designed court could provide international justice with permanence and tangibility.⁹ Yet within the jurists’ elaborations on this question, one can also find different takes on war as an actionable problem, such as the notion that “the prevention of War” was “the practical end of the establishment of the Court,”¹⁰ as well as on international law as a way of knowing, for instance the idea that the future court would be a “scientific legal structure.”¹¹ These seemed as good a lead to pursue as any, and soon I went off to the archives.

⁷ Mark Lewis, *The Birth of the New Justice: The Internationalization of Crime and Punishment, 1919-1950* (Oxford, UK: Oxford University Press, 2014), at 4.

⁸ For instance, Rafael Altamira, the Spanish member of the committee, was a professor of law and a senator, and the committee’s president, Edouard Descamps from Belgium, was a professor of law, a senator, and a member of the Belgian government.

⁹ Cf. Léon Bourgeois, “Report on the Organisation of a Permanent Court of International Justice,” 13.02.1920, File 21/3007/88, Archive of the League of Nations Secretariat.

¹⁰ Advisory Committee of Jurists, *Procès-Verbaux*, 222. The quote refers to a statement by Lord Phillimore.

¹¹ Advisory Committee of Jurists, *Procès-Verbaux*, 27 (de Lapradelle).

At one time, however, the chapter also started with the assumption that research ought to be systematic, and that in practice, systematicity consisted in devising and implementing a research design. My idea was that genealogy could proceed by taking a contemporary institution to write its – contingent, accidental, and de-naturalizing – history.¹² Besides the truth commission, I thought, another contemporary international institution which seeks knowledge of past violence for the purpose of preventing future violence was that of the international criminal tribunal. On that score, the two groups of international jurists just introduced interested me because both groups' debates featured a proposal for a kind of international tribunal to pass sentence on unlawful aspects of war. In 1872, Gustave Moynier, the president of the International Committee of the Red Cross and a professional acquaintance of Rolin-Jaequemyns, suggested the creation of an "international judicial institution" to investigate and sentence violations of the Geneva Convention of 1864.¹³ Roughly half a century later, Edouard Descamps, the Belgian president of the Advisory Committee of Jurists, proposed that the international court which he and his colleagues were tasked with devising should include "a High Court of International Justice" to try war as well as other "crimes against international public order and against the universal law of nations."¹⁴ Both proposals ultimately remained unrealized. Nonetheless, I wondered: what questions did the ways in which the problem of war and knowledge about war had been assembled in these proposals for prosecuting war and/or war-time violence raise about international criminal justice's role in the contemporary problematization of war?

Next, the chapter began with periodization. In his history of understandings of war in international law, Stephen C. Neff distinguishes four periods: the Middle Ages and up to circa the end of the sixteenth century, during which time war was seen "as a means

¹² This was inspired *inter alia* by Price, *Chemical Weapons Taboo*.

¹³ Gustave Moynier, *Note sur la création d'une institution judiciaire internationale propre à prévenir et à réprimer les infractions à la Convention de Genève*, lue au Comité international de secours aux militaires blessés dans sa séance du 3 janvier 1872 (Geneva, Switzerland: Soullier et Wirth, 1872).

¹⁴ Advisory Committee of Jurists, *Procès-Verbaux*, 498.

of enforcing [natural] law” and hence as divine will; a period of transition, lasting roughly from 1600 to the Congress of Vienna, during which war transformed “from a tool of God to a tool of men”; the nineteenth century, a period in which war was seen “unashamedly as a clash of rival national interests”; and finally, starting in 1919, the period in which we still live today – in which “a reversion to the medieval just-war outlook” led from the League of Nation’s category of unlawful war to the post-Second World War criminalization of war and finally to war as self-defence and the War on Terror.¹⁵ This aroused my curiosity, for it suggested that comparing the two legal debates I had identified should yield contrasting findings.

Then again, this chapter also began as an attempt at coming to grips with international law. As I have discussed in the final section of Chapter 2, during the period on which I focus in this thesis, international jurists were often in the vanguard of efforts to render war into an epistemic and actionable object. To get a hold of international law as the wider context in which the two groups of international jurists in the 1870s and 1920s operated, I turned to writings by scholars of international law, such as Gerry Simpson and Miloš Vec.¹⁶ While for Simpson, international law is by now naturalized as a “way of thinking about war,”¹⁷ Vec understands it as a tool by means of which states can settle their international conflicts, and as such as one of a range of tools which also includes diplomacy and war. Both understandings lead on to the same substantial question: how has international law been able to establish its contemporary position vis-à-vis war? How, as Vec might put it, did it become possible for one tool of conflict settlement to attempt to usurp another, and what, as Simpson might have it, enabled international law to evolve into a way of thinking about war? For Vec, the answer is that over the course of the past two centuries, the “intensification” of inter-state

¹⁵ Neff, *War and Law*, 3f.

¹⁶ Miloš Vec, “Verrechtlichung internationaler Streitbeilegung im 19. Und 20. Jahrhundert? Beobachtungen und Fragen zu Strukturen völkerrechtlicher Konfliktaustragung,” in Serge Dauchy, Miloš Vec (eds.), *Les conflits entre peuples: De la résolution libre à la résolution imposée* (Baden-Baden, Germany: Nomos, 2011), 1-21; Simpson, *Law, War and Crime*; cf. Agatha Verdebout, “The Contemporary Discourse on the Use of Force in the Nineteenth Century: A Diachronic and Critical Analysis,” *Journal on the Use of Force and International Law* 1, no. 2 (2014), 223-246.

¹⁷ Simpson, *Law, War and Crime*, 4.

relations and the emergence of an international community enabled the “judicialization” of international conflict resolution. Insofar as this intensification and this judicialization entailed that states had to (legally) justify their international conduct, war ceased to be a sovereign prerogative and could become a problem for international law to address. Simpson’s concern, by contrast, is more specifically with international criminal law. He argues that it was only after the Versailles Peace Conference that it became possible to think of international law as having something to say about war, and of what is more, of calling war a crime. How would the two groups of jurists in whose debates I had become interested fit within the broader context sketched by Vec and Simpson?

Most recently, this chapter began with Bartelson’s *War in International Thought*. As the introduction to this thesis has discussed, Bartelson’s is an inquiry into “war” as an object of thought and into the role that “war” has been ascribed in producing social and political order. With respect to international law, Bartelson suggests for “war,” international law, sovereign statehood, and international order to have been co-emergent. In particular, he argues, the idea of war as productive of order has enabled international law’s reproduction of itself and its ways of knowing – while international law, in turn, has made it possible for “war” to continue to be thought of as productive of order.¹⁸ Albeit not quite turning Vec and Simpson’s question on its head, Bartelson thus finds ways to analytically hold international law at bay. Yet his analysis left me wondering: how did international law get from war as an object of thought to war as an empirically knowable and practically addressable problem? And insofar as war’s becoming a practical problem implied a challenge to the view of war as productive of order, what, in turn, did this challenge produce?

From all of these starting points, in this chapter I look at the problematization of war in international law: at how two groups of jurists, conversing in the aftermath of two

¹⁸ Bartelson, *War in International Thought*, ch. 4. Against Neff, Bartelson argues that the transition between medieval and modern legal understandings of war was far less all-encompassing and far more messy.

major wars, understood war and knowledge, and at how in two early and ultimately abandoned proposals for an international criminal tribunal, war and war-time violence were rendered into epistemic and actionable objects on which international law could practically get to work.

In terms of historical analysis, the chapter thus both widens and narrows the focus of the preceding one. On the one hand, I broaden the historical scope of the analysis to look at examples of the problematization of war which predated and followed the Balkan Commission's report. On the other hand, out of the many different formulations of the problem of war which this report suggested, I focus more specifically on legal formulations. Moreover, I also follow up on the preceding chapter's finding that for the Balkan Commission, the notion of "civilization" brought with it the challenge of having to make sense of the Balkan Wars as examples of both European-modern and non-European-modern warfare. To this end, in this chapter I consider what prevailing beliefs about "civilization" meant for the efforts of the overwhelmingly Western European jurists attempting to take action in the aftermath of two far more unambiguously "European" wars.¹⁹

In addition, this chapter also picks up on the preceding one in another way: namely, in terms of knowledge practices and critical praxis. Following up on the previous chapter's findings about the emergence, within the Balkan Commission's work, of the practice of *writing a report*, in this chapter I experiment with what *writing a chapter* consists in. In this, my aim is to reflect upon and put into practice two genealogical postulates.

First, it is often argued that rather than searching for the ultimate origin and identity of its objects, genealogy studies their manifold emergences, accidental turns, and fortuitous processes of becoming. The same, I believe, is true of genealogy itself:

¹⁹ Obviously, this is not to argue that the First World War did not involve theatres of war not located in Europe, however defined, not that it did not have ramifications across the globe. Rather, it is to appreciate that in the Advisory Committee of Jurists's ways of problematizing war, the First World War featured as an undeniably European-modern war – which was, as the chapter will go on to argue, one of the reasons why the committee elided almost any explicit mention of it.

genealogical analysis is a process whose different elements are themselves processual, never fully fixed, ever becoming. Most certainly, the process of researching and writing this chapter (and this thesis) has been one of fits and starts, of ideas first embraced and then dropped, of sources and literatures pulling me now in this, now in that direction, of chance encounters and happenstance. In fact, this process has consisted of many different processes – some simultaneous, some consecutive, some overlapping, some widely diverging. Yet genealogy as itself a tangle of processes is rarely made explicit: when genealogy is taken to be a method, it is presumably fixed at the outset of the research, externalized from that research's processes, and shielded from the critical insights these processes shed. To counteract this tendency, I decided to use this introduction not only to present the examples, the actors, the sources, the secondary literatures to be studied, but also to report on the chapter's manifold beginnings – and thereby on some of this thesis' messy processes of becoming.

Secondly, as Nicholas Onuf explains, Foucault's genealogies assume not only "that whatever we excavate will be fragmentary – shards that resist assembly into recognizable objects," but also that "[t]he fragments to be excavated were fragments even before they were buried."²⁰ If things are ever-emerging in frequently coincidental ways, and moreover, if the only perspective on history open to us is likewise fragmentary, then there are no overarching wholes to be found and recounted.²¹ And yet, the way in which so many genealogies in IR are written up as encompassing narratives, as analytical storylines which make sense of all the fragments as if these had once formed a single and comprehensible edifice, does not reflect genealogy's philosophy of history. What would it look like, I wondered, to write up genealogy's findings as fragments, snippets, shards? In this chapter's three main sections I set out to answer this question by presenting fragments of understandings of war and war-

²⁰ Nicholas Onuf, "The Figure of Foucault and the Field of International Relations," in Philippe Bonditti, Didier Bigo, Frédéric Gros (eds.), *Foucault and the Modern International: Silences and Legacies for the Study of World Politics* (New York, NY: Palgrave Macmillan, 2017), 15-31, at 20.

²¹ On Foucauldian genealogies as histories which assume unpredictability and eschew "grand internal logic," cf. Joseph Mackay, Christopher David Laroche, "The conduct of history in International Relations: rethinking philosophy of history in IR theory," *International Theory* 9, no. 2, 203-236, at 224.

time violence as legal problems, of assumptions about how international law could know these problems, and of notions of “civilization.”

War and war-time violence’s becoming problematic

War as a relationship between states. The international jurists debating the Franco-German War believed that it was only the governments – but not the individual citizens²² whom these governments represented or the soldiers who fought each other on the battlefield – who were each other’s foes in war: “[c]urrently, war is considered as a relation of State to State and not of individual to individual.”²³ More generally, as Lewis points out, these jurists “viewed the state as a positive [historical] development.”²⁴ What this understanding implied for law’s potential bearing on war can be gleaned from the metaphors which the jurists put forth to make sense of war as a relationship between states. Some argued that war had lost its “ancient character of a feud [*querelle*]” and had become “a duel between two governments.”²⁵ Others found that war had “much closer analogies” with a “trial by combat [*combat judiciaire*],”²⁶ an institution of medieval Germanic law. While the trial by combat had been a way of settling conflicts between contradictory truth claims within the context of a judicial procedure, the duel, though having developed out of the trial by combat, was an extra-

²² On the “language of citizens” (which, in the aftermath of the French Revolution and the Napoleonic Wars, had taken over from the notion of people as subjects or *Untertanen* of the state), cf. Ute Frevert, “German conceptions of war, masculinity and femininity in the long nineteenth century,” in Sarah Colvin, Helen Watanabe-O’Kelly (eds.), *Women and Death 2: Warlike Women in the German Literary and Cultural Imagination since 1500* (Rochester, NY: Camden House, 2009), 169-185, at 172.

²³ Cf. Gustave Moynier, *Étude sur la Convention de Genève pour l’amélioration du sort des militaires blessés dans les armées en campagne (1864 et 1868)* (Paris, France: Librairie de Joel Cherbuliez, 1870), at 11; Gustave Rolin-Jaequemyns, *La guerre actuelle dans ses rapports avec le droit international, Extrait de la Revue de Droit international et de législation comparée*, 4^e livraison 1870 (Gent, Belgium: I.-S. van Doosselaere, 1872), at 24; Gustave Rolin-Jaequemyns, “Note sur le Projet de M. Moynier, relatif à l’Etablissement d’une Institution Judiciaire Internationale, Protectrice de la Convention, avec lettres de MM. Lieber, Ach. Morin, de Holtzendorff et Westlake,” *Revue de Droit International et de Législation Comparée* 4 (1872), 325-346, at 327; Neff, *War and Law*, 189.

²⁴ Lewis, *Birth of the New Justice*, 23.

²⁵ Richard Combden *apud* Moynier, *Étude sur la Convention de Genève*, 11f.

²⁶ Moynier, *Étude sur la Convention de Genève*, 35.

judicial mechanism for settling conflicts impinging the honour of parties to a conflict.²⁷ Hence, if war was like a duel, all that international law could do was to “stand aside while they [the warring parties] fight the quarrel out.”²⁸ The argument that war was more akin to a trial by combat challenged this notion and its corollaries, the ideas that wars were fought for the purpose of defending a state’s or nation’s honour and that they were a conflict between private parties who could themselves set the rules of engagement.

War as a relationship between individuals. As Léon Bourgeois said in his opening speech before the Advisory Committee of Jurists in 1920:

“It needed, however, without doubt that a terrible object-lesson [the First World War] should be given to the world in order that into the minds not only of governments but of peoples there might sink the essential truth that it is not in the conflicts of force that one can ever discover the foundations of peace between States any more than between individuals.”²⁹

Hence, in the aftermath of the First World War, the jurists understood war as a relationship not only between states or between governments, but also between individuals.

War as fateful. Whether as a relationship between states or between individuals, war was a product of human decision-making. At the same time, however, the primary sources also contain a sense of war as an ill-fated phenomenon beyond the reach of human action. In 1920, the French member of the Advisory Committee of Jurists, Ferdinand de Lapradelle, expressed his hope that the to be designed international court would remain “capable in the unhappy event of war between two Members of the League of Nations,” or in the French original, “*apte à fonctionner si le malheur d’une*

²⁷ Cf. Ute Frevert, *Men of Honour: A Social and Cultural History of the Duel* (Cambridge, UK: Polity Press, 1995).

²⁸ Westlake *apud* Koskenniemi, *Gentle Civilizer*, 85. On war as a private and contractual relationship between states, cf. Neff, *War and the Law of Nations*, 137.

²⁹ Advisory Committee of Jurists, *Procès-Verbaux*, 6.

guerre entre deux Membres de la Société des Nations se produisait."³⁰ Lost in the official translation³¹, de Lapradelle's phrase implied war not simply as an "unhappy event," but as a "malheur," a fateful misfortune.³² Curiously, a similar understanding of war can be found in the primary sources discussing the Franco-German War, which the French jurist Griolet once called "the greatest *malheur* of the century."³³

War as inevitable. Writing in the aftermath of the Franco-German War, Rolin-Jaequemyns saw in war an "inevitable extremity,"³⁴ and Moynier referred to war as "an involuntary [*forcé*] state of affairs, [...] an inevitable hardship."³⁵ However, this claim about war's inevitability was immediately qualified, for as Moynier added, "[i]n our days, one no longer considers war as a [generally] inevitable evil; as the only way of settling an international conflict. The goal of a just war, as already Vattel said, is 'to obtain by force a just cause which one could not obtain in other ways.'"³⁶ The notion of a "just cause" of war had first made an appearance in medieval just war thinking, where it pertained to wars fought "for the subduing of evil and the promotion of good" in the name of a divinely ordained kind of international justice.³⁷ For Rolin-Jaequemyns and Moynier, however, it was states' right to self-defense and -protection that constituted a just cause of war.³⁸ In a situation in which all other means of settling

³⁰ *Ibid.*, 510.

³¹ With the exception of Elihu Root, the members of the Advisory Committee of Jurists debated in French. From the notes taken by the committee's secretariat staff, a draft verbatim report was compiled and given to the members of the committee for corrections before the next session. Frequently, these drafts were passed back and forth multiple times, and sometimes also discussed in the subsequent session. The translation usually took place immediately after the first draft.

³² In the *Dictionnaire de l'Académie française* (Paris, France: Hachette, 1932), the entry for "malheur" reads "Mauvaise fortune, mauvaise destinée" (bad fortune, bad destiny). Similarly, Émile Littré's *Dictionnaire de la langue française, Tome 3* (Paris, France: Hachette, 1873) explains the term "malheur" as a "Mauvaise destinée" (bad destiny) or also an "Événement fâcheux" (unfortunate event).

³³ Gaston Griolet, "Communication relative à l'influence de la dernière guerre sur les progrès du droit des gens," *Bulletin de la Société de Législation Comparée* 3, no. 2 (1872), 26-47, at 46.

³⁴ Rolin-Jaequemyns, "Note sur le Projet," 325.

³⁵ Moynier, *Étude sur la Convention de Genève*, 14. On the idea of war as an inevitable feature of international relations, cf. Neff, *War and Law*, 197.

³⁶ Moynier, *Étude sur la Convention de Genève*, 6.

³⁷ Neff, *Law and War*, 29.

³⁸ For Rolin-Jaequemyns, for instance, war was an "extreme measure for the enforcement of rights [*revendication*] or for national defence" (Rolin-Jaequemyns, *La guerre actuelle*, 12; cf. Rolin-Jaequemyns, "De la Manière," 509; see also Koskenniemi, *Gentle Civilizer*, 86).

an international conflict and achieving self-protection – political means such as diplomacy and mediation, but also legal means such as arbitration³⁹ – had been to no avail, war could become a kind of last resort of conflict settlement, objectively inevitable and hence just.⁴⁰

War as possible. In 1920, the Advisory Committee of Jurists' efforts at legally problematizing war started from the assumption that "even under the régime of the League of Nations, war is possible."⁴¹ Unlike their predecessors in the 1870s, these international jurists had the Hague Conferences of 1899 and 1907 to look back upon – and in light of the recent experience of the First World War, they found them to have constituted seriously flawed attempts at putting war in its place. The Hague Conferences had gathered existing rules for international arbitration into the Convention for the Pacific Settlement of International Disputes and had founded a Permanent Court of Arbitration⁴², yet as the First World War had shown, this codification and institutionalization of arbitration had not sufficed to make of arbitration a real alternative to war. In the Advisory Committee of Jurists' evaluation, the decisive factor was that the Hague Conferences had not made arbitration mandatory – which is why the majority of the committee wanted the jurisdiction of the Permanent Court of International Justice to be compulsory. The compulsory nature of the court's jurisdiction changed the emphasis of what it meant for war to be an extreme measure: under the League of Nations system, war was, in Neff's words, "an exceptional act requiring affirmative justification"⁴³ – it was still possible, but no longer inevitable.

³⁹ Whether arbitration amounted to a political or a legal means was a matter of interpretation – and of disciplinary convenience. The majority of the Advisory Committee of Jurists, for instance, sought to differentiate arbitration from adjudication and therefore emphasized that "[t]here was at times a tendency for the arbitrators to consider themselves as mediators rather than as faithful interpreters of Law, as diplomats rather than judges" (Advisory Committee of Jurists, *Procès-Verbaux*, 694).

⁴⁰ Cf. Neff, *Law and War*, 162.

⁴¹ Advisory Committee of Jurists, *Procès-Verbaux*, 509 (de Lapradelle), cf. 511 (Descamps). See also Neff, *Law and War*, 293.

⁴² Hague Conventions of 1899, Title IV.

⁴³ Neff, *Law and War*, 279.

War as criminal. For a minority among the members of the Advisory Committee of Jurists, however, the idea of granting the Permanent Court of International Justice compulsory jurisdiction was anathema. They preferred Descamps' proposal for a High Court of International Justice, "the very existence of [which]," they concurred with Descamps, "might have a considerable preventative effect."⁴⁴ Modelled upon the Belgian Court of Cassation⁴⁵, this High Court would have been authorized to try "crimes of such a nature that the security of all States would be imperilled by them"⁴⁶ – a category which, next to piracy and attacks of "Sovietists"⁴⁷ against members of the League's organs, also included aggressive war, or "the crime of having made war."⁴⁸ Descamps believed that the League of Nations had brought about "a more advanced régime of international organisation"⁴⁹ to the effect that it was now possible "to define crimes against International Law."⁵⁰ Therefore, while recognizing that "the Covenant of the League of Nations acknowledges the existence of wars which are not considered as illegal," Descamps argued that "it does not follow from that that there cannot be wars which actually constitute crimes."⁵¹ But Descamps' proposal for a High Court did not have majority appeal, and many of his colleagues found that erecting a penal court before defining war as a crime would mean to "[begin] at the wrong end of the problem."⁵² For one, for the majority of the jurists, the idea of a High Court had no place in an international realm which they still took to be defined by state sovereignty: against Descamps' belief to the contrary, many of his colleagues "did not think it was

⁴⁴ Advisory Committee of Jurists, *Procès-Verbaux*, 498 (Descamps).

⁴⁵ In the Belgian example, as Descamps explained to his colleagues, "the House of Representatives may bring charges against the Ministers," and the Court of Cassation then had the "power to define the offence and to determine the punishment" (*ibid.*, 512). In Descamps' High Court, the Assembly and the Council of the League of Nations could have passed cases to the court, which would then define and investigate the exact crimes.

⁴⁶ Advisory Committee of Jurists, *Procès-Verbaux*, *Ibid.*, 498f.

⁴⁷ *Ibid.*, 513. Cf. Lewis, *Birth of the New Justice*, 84.

⁴⁸ Advisory Committee of Jurists, *Procès-Verbaux*, 507 (Phillimore), cf. 505 (Root). The "subtext" to this was Germany's attack on Belgium (Lewis, *Birth of the New Justice*, 84; cf. Advisory Committee of Jurists, *Procès-Verbaux*, 511 (Descamps)).

⁴⁹ *Ibid.*, 512.

⁵⁰ *Ibid.*, 503, cf. 511f. (Descamps).

⁵¹ *Ibid.*, 511 (Descamps).

⁵² *Ibid.*, 504 (Loder).

possible in international affairs to make a distinction between civil law and penal law as was done in national law.”⁵³ Some therefore worried that the proposal would create “a ‘super-State [...], a great central authority exercising its power over States which, up to that time, had been independent.”⁵⁴ Others found that since “[a] State which considers itself wronged will always consider that its adversary is a criminal and, often, it will even go to war to punish it,”⁵⁵ a High Court which “would be a danger to the sovereign rights of States” might constitute “a menace to peace.”⁵⁶ Moreover, to many of the jurists, Descamps’ proposal risked re-opening the question of the criminality of the First World War – which, at the Paris Peace Conference, had been a highly contentious one, and which they worried might lead to further discord and enmity.⁵⁷ Although de Lapradelle endorsed Descamps’ proposal and stressed that “[i]t was now a question of building up the future and not raking up the past,”⁵⁸ as the Italian member of the committee, Arturo Ricci-Busatti, remarked,

“[a]ll the members who had already spoken on the subject [of Descamps’ proposal] had referred to the nightmare of the past, though they all wished to exclude any remembrance of it from the work of the Committee. This showed that the past was necessarily bound up in the question.”⁵⁹

Finally, the idea of a High Court was “out of step” with a zeitgeist for which, as Lewis argues, “[t]he main means of preventing violent conflicts were [...] political, arbitral,

⁵³ *Ibid.*, 503 (Ricci-Busatti).

⁵⁴ *Ibid.*, 505 (Root). Descamps responded that “[t]here is no need whatever to imagine that the institution of a High Court would amount to the creation of a super-State, and would involve an unjustified abdication of sovereign powers,” and that rather, “the new Court involves a joint and enlightened use of the attributes of sovereignty and that, under a set of conditions which are in some respects new, it may, in the common interest, be incumbent upon all to give their adherence to certain perfectly justified measures” (*ibid.*, 512).

⁵⁵ *Ibid.*, 507 (Phillimore)

⁵⁶ *Ibid.*, 504 (Fernandes).

⁵⁷ See, for instance, Hagerup and de Lapradelle’s back-and-forth about Descamps’ proposal (Advisory Committee of Jurists, *Procès-Verbaux*, 499ff.). During the Paris Peace Conference, only the violence perpetrated by the central powers had been criminalized – to the chagrin of the German and Austrian governments, who had pushed for an “impartial” and “neutral” inquiry or an international court that would address the “crimes” of both sides.

⁵⁸ *Ibid.*, 500 (de Lapradelle).

⁵⁹ *Ibid.*, 502 (Ricci-Busatti); cf. 505 (Root).

and judicial processes to resolve interstate disputes.”⁶⁰ After a brief debate, therefore, the Advisory Committee of Jurists rejected out of hand Descamps’ proposal for a High Court and with it the idea of war as crime.

War as an economic and social problem. The international jurists debating the Franco-German War were in principle perceptive to war’s having a destructive impact upon economic affairs, yet this was not a main theme of their discussions. Moynier mentioned the “economic shock that war engenders and which disrupts all the cogs of society,”⁶¹ and Rolin-Jaequemyns urged that they ought to bear in mind war’s “rapid, violent, and sterile destruction of people and of goods, of that which lives and that which makes live.”⁶² Hence, insofar as war came into view as an economic problem, this was always entangled with war as a social matter. In turn, this might help explain why war’s economic ramifications were not a more central concern for these jurists: as a legal relationship between governments rather than between people, war’s negative socio-economic consequences were beyond the purview of international law.

War as a disruption of progress. As far as one can say from the primary sources, the Advisory Committee of Jurists was not concerned about war as destructive of people and of goods. The objects of these international jurists’ worries were more abstract: they were troubled about the interruption which the First World War had posed to “the progress of peace and law.”⁶³ This war, it seemed to them, had not only “destroyed” the historically evolved and “highly complicated system” of “human society,”⁶⁴ but had also severely impaired “the principle of international law.”⁶⁵ Therefore, if international law was to achieve a permanent and tangible form, it had to bring war under its control: the League of Nations, the committee maintained, had to

⁶⁰ Lewis, *Birth of the New Justice*, 81. Cf. Loder’s claim that “the President’s idea was good, but that the time was not yet ripe for its realisation” (Advisory Committee of Jurists, *Procès-Verbaux*, 504).

⁶¹ Moynier, *Étude sur la Convention de Genève*, 11.

⁶² Rolin-Jaequemyns, *La guerre actuelle*, 79.

⁶³ Advisory Committee of Jurists, *Procès-Verbaux*, 702.

⁶⁴ Bernard Loder, *Address before the International Law Association*, 28 May 1920 (File 21/6017/859, League of Nations Archive).

⁶⁵ Information Section, *Draft of official “communiqués” of the Advisory Committee of Jurists*, No. 10, 26 June 1920 (File 21/5980/4959, 03.08.1920, Archive of the League of Nations Secretariat), 2.

“establish a reign of Justice in a world which has been convulsed by the most murderous of wars,”⁶⁶ and the to be founded court was to help with this task.

War's political and voluntary element. In the aftermath of the Franco-German War, Rolin-Jaequemyns and his colleagues were divided about the extent to which governments’ “motives” and “justifications” for war could be subject to legal evaluation, yet they agreed that international law was unable to completely grasp and control these aspects of war.⁶⁷ Rolin-Jaequemyns, for instance, presumed that a government’s decision for war always had some “purely political side” to it: “an element which we will call voluntary, which escapes all juridical appreciation [...] and with which the science of law does not need to occupy itself.”⁶⁸ In this political aspect of a decision for war, “it is up to the statesman to judge the appropriateness with which he might employ the means which the law offers him.”⁶⁹ Similarly, Rolin-Jaequemyns’ colleague Griolet maintained that a government’s privately held “*motives*” and publicly given “*justifications*” for a decision to go to war were not legal in character, but constituted “a political, historical, or philosophical matter.”⁷⁰ Irrespective of their stance about which government had caused the Franco-German War, the jurists hence concurred that, as Neff puts it, “[t]he decision to resort to war [...] was the prerogative of policy, not of law.”⁷¹

Morality rendering war problematic. Therefore, in addition to international law, Moynier and his colleagues sometimes also relied on moral reasoning to problematize war. For one, because morality was “of a higher order”⁷² than law, they could turn to morality to circumscribe aspects of the conduct of war which were impossible to grasp by

⁶⁶ Bourgeois, *Report*, 1.

⁶⁷ While Rolin-Jaequemyns was in favour of weighing these matters in legal terms, Griolet strictly opposed any such undertaking. Cf. Rolin-Jaequemyns, *La guerre actuelle*, 12ff.; Griolet, “Communication,” 29.

⁶⁸ Rolin-Jaequemyns, *La guerre actuelle*, 55.

⁶⁹ *Ibid.*, 75.

⁷⁰ Griolet, “Communication,” 29, italics in original.

⁷¹ Neff, *War and the Law of Nations*, 164.

⁷² Rolin-Jaequemyns, *La guerre actuelle*, 80.

means of international law alone.⁷³ Moynier, for example, argued that where international law “authorizes us to use all the means within our power to defeat the enemy, [...] morality condemns those [means] which would be unjust,”⁷⁴ including practices such as pillage, poisoning, the assassination of military leaders, and massacres of prisoners of war or of the general population.⁷⁵ Furthermore, morality was the opposite of politics⁷⁶ and provided a tie between states that even war as the most extreme form of politics could not sever.⁷⁷ In sum, in the legal debates about the Franco-German War, morality was an institution on which the jurists could lay claim in order to resist being co-opted by politics.

War-time violence as the problem at stake. As the previous fragment has already hinted at, to the jurists debating the Franco-German War, it was war’s violence and not war as such that was the problem at stake. They believed that the “suppression of war itself” could, as Moynier put it, be “no more than a stopgap solution, a thing to which one resigns oneself in default of a better and more humane means for making useful war’s law.”⁷⁸ Progress in legally alleviating the conduct of war had thus far not been straightforward: “[i]t is,” Moynier wrote, “through many oscillations that the assuagement of war’s mores has been accomplished.”⁷⁹ However, the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (1864), more commonly known as the First Geneva Convention, meant that there now was international law applicable to the conduct of war. Hence, Moynier and his colleagues focused their problematizing efforts not on war itself, but on war-time violence. The members of the Advisory Committee of Jurists were somewhat more sympathetic to

⁷³ Cf. Moynier, *Étude sur la Convention de Genève*, 7f.

⁷⁴ *Ibid.*, 16.

⁷⁵ *Ibid.*, 7.

⁷⁶ Rolin-Jaequemyns, “De la Manière d’apprécier,” 478f.: “If diplomats/statesmen are too engaged in the necessities of active politics, the peace societies are too tempted to forget these. Even today, they have not yet sufficiently distinguished between the law of morality [...] and the demands of practical reason.”

⁷⁷ Moynier, *Étude sur la Convention de Genève*, 15f.: “If war brings to burst the already interrupted legal relations [between states], it does not interrupt moral relations.”

⁷⁸ Moynier, *Étude sur la Convention de Genève*, 31f.

⁷⁹ *Ibid.*, 4f.

the idea of problematizing war-time violence, too. The French member of the committee, Ferdinand de Lapradelle, found it “natural that it should fall to the League of Nations to watch the observance of the rules by the belligerents,”⁸⁰ and the more sceptical British member of the committee, Lord Phillimore, was nonetheless open to defining acts of war that were not in accordance with the laws of war as “an offence against the Covenant of the League of Nations.”⁸¹

War-time violence as timeless. To Moynier and his colleagues debating the Franco-German War, war-time violence had a timeless aspect to it. Conceiving of war as “the most violent [...] of human relations,”⁸² they took war’s violence to be an expression of “unchained passions.”⁸³ Insofar as this violence “occasionally drives the most inoffensive man to acts from which, in other times, his imagination would have backed away in horror,”⁸⁴ war was “brutal and intoxicating”⁸⁵ and produced “a common, blind, and bestial fury”⁸⁶: “In effect the most peaceful man, if he is put in possession of a weapon and asked to use it every day to attack or defend, deadens his soul like his body.”⁸⁷ Thereby, war had the capacity to reproduce itself – for “the more man comes into contact with brutality, the more he is carried to deal with his differences by means of arms.”⁸⁸

War-time violence as historically malleable. As Moynier wrote, “[i]f war has not disappeared, it has not remained unchanged either.”⁸⁹ During their own lifetime, the

⁸⁰ Ibid., 509 (de Lapradelle).

⁸¹ Ibid., 508 (Phillimore).

⁸² Rolin-Jaequemyns, *La guerre actuelle*, 8.

⁸³ Cf. Moynier, *Étude sur la Convention de Genève*; Moynier, *Note sur la création d’une institution judiciaire internationale*; Rolin-Jaequemyns, “Note sur le Projet,” 326; John Westlake, “Letter to Guillaume-Henri Defour, February 1872,” in Gustave Rolin-Jaequemyns, “Note sur le Projet de M. Moynier, relatif à l’Établissement d’une Institution Judiciaire Internationale, Protectrice de la Convention, avec lettres de MM. Lieber, Ach. Morin, de Holtzendorff et Westlake,” *Revue de Droit International et de Législation Comparée* 4 (1872), 334-335, at 335.

⁸⁴ Rolin-Jaequemyns, *La guerre actuelle*, 40.

⁸⁵ Ibid., 74.

⁸⁶ Ibid., 40.

⁸⁷ Rolin-Jaequemyns, “De la Manière,” 492.

⁸⁸ Moynier, *Étude sur la Convention de Genève*, 1.

⁸⁹ Ibid., 4.

jurists who were now commenting on the Franco-German War had witnessed how war's "procedures [...] have repeatedly transformed themselves" and how its "customs have experienced no less remarkable changes."⁹⁰ While by procedures, the jurists had in mind the "establishment of standing armies" which could "discipline the soldiers," war's changing "customs" concerned the codification of rules for the conduct of war, such as the 1863 Lieber Code and the aforementioned 1864 Geneva Convention.⁹¹ Thus, while wartime violence's self-reproductive capacity was deemed a constant aspect of war, the way in which violence was employed in combat-situations appeared historical.

The need for enforcement mechanisms. As the Franco-German War had demonstrated⁹², the existence of the Geneva Convention alone was not as effective at delimiting the range of war's legitimate means as had originally been hoped. To better fence in violence's timeless nature by means of law, Moynier argued that what was needed was "a barrier against the unleashing of the frenzy and the greed of the combatants; it is necessary to dig a trench deep enough, to erect a retrenchment high enough for war not to bring about more than the minimum of ills compatible with its existence."⁹³ In short, the existing legal rules for the conduct of war needed to be outfitted with enforcement mechanisms. Five decades later, the members of the Advisory Committee of Jurists found that such mechanisms were still lacking. "The most important thing in connection with the rules of war," de Lapradelle opined, "is the existence of effective sanctions, and not ludicrous pecuniary penalties, such as those stipulated in the Convention of 1907."⁹⁴

War-time violence as criminal. The Advisory Committee of Jurists understood breaches of the laws of war to constitute "crimes of war."⁹⁵ Some of the jurists assumed that the

⁹⁰ *Ibid.*, 4f.

⁹¹ *Ibid.*, 8f. Cf. Francis Lieber, *Instructions for the Government of Armies in the Field* (New York, NY: D. Van Nostrand, 1863).

⁹² Moynier, *Note sur la création d'une institution judiciaire internationale*, 2.

⁹³ Moynier, *Étude sur la Convention de Genève*, 30.

⁹⁴ Advisory Committee of Jurists, *Procès-Verbaux*, 510 (de Lapradelle).

⁹⁵ *Ibid.*, 507 (Phillimore), cf. 505 (Root).

Permanent Court of International Justice would automatically have jurisdiction over crimes of war.⁹⁶ Others were more sceptical, yet nonetheless open to developing a definition of crimes of war as “an offence against the Covenant of the League of Nations”⁹⁷ which would be justiciable within an international “sphere of penal justice.”⁹⁸ To the international jurists debating the Franco-German War, however, the notion of war-time violence as criminal was not available – they thought of such instances of war-time violence as “offenses” or “breaches” of the laws of war.⁹⁹

Delimiting the scope of the principle of necessity. In the second half of the nineteenth century, the so-called principle of necessity purported that the legitimacy of the conduct of war depended on what was militarily necessary for achieving war’s aims. To problematize war-time violence, the secondary literature contends, international jurists would draw on positivist legal philosophy to delimit the scope of the principle of necessity: wars had to have rational objectives and to further states’ interests, and excessive and hence non-rational acts of violence were disallowed.¹⁰⁰ In the legal debates about the Franco-German War, however, one finds an example of a decidedly non-rationalistic argument to counter the idea of military necessity. According to Moynier, what had brought about recent changes in the rules regarding the conduct of war was the discovery and subsequent application of “a natural law that man ought not to be violated without punishment.”¹⁰¹ Hence, the destruction of the enemy could no longer be considered a legitimate goal of war, and it became possible for Moynier to argumentatively “deprive war of the good of atrocities”¹⁰²: depending on “whether one assigns to war the goal of destroying the enemy, of dispossessing the enemy, or only of wresting an approval from him, the same rigours will not be necessary, nor, as a consequence, legitimate.”¹⁰³ According to this reasoning, then, the timeless nature of

⁹⁶ *Ibid.*, 509 (de Lapradelle).

⁹⁷ *Ibid.*, 508 (Phillimore).

⁹⁸ *Ibid.*, 505 (Root).

⁹⁹ E.g. Moynier, *Note sur la création d’une institution judiciaire internationale*.

¹⁰⁰ Koskeniemi, *Gentle Civilizer*, 86; Neff, *War and Law*, 186f.

¹⁰¹ Moynier, *Étude sur la Convention de Genève*, 4f.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*, 5f.

law stood against the similarly timeless self-reproductive nature of war-time violence. What was historical – and, indeed, progressive – were jurists’ insights into war and law, as well as the specific rules and practices they derived from these insights.

Breaches of the rules of war as a civil wrong. With war understood as a relationship between states, another way for nineteenth-century international jurists to counter the principle of necessity was to legally problematize governments’ responsibility for their conduct of war. Many of the jurists debating the Franco-German War conceived of unlawful acts of war as, legally speaking, wrongs accruing within a private relationship. Achille Morin, for instance, found that since “the infractions of the [Geneva] convention [...] were not simple *faults* due to negligence or ignorance” on the part of individual soldiers, but rather due to the respective governments and military leaders having failed to “give the necessary instructions,” these governments and military leaders bore a “civil responsibility [*responsabilité civile*]” for these infractions.¹⁰⁴ Drawing on the Napoleonic Code of 1804 – in which *responsabilité civile* was the branch of the law that regulated how injuries incurred in private relationships were to be repaired – this proposal made of war a contractual relationship between private parties, and of infractions of the Geneva Convention a breach of contract for which the party at fault could be made to pay damages. In a similar vein, Rolin-Jaequemyns thought that it was the government’s “wrong/fault [*tort*] to not have implemented or to have implemented badly the Geneva Convention.”¹⁰⁵ By recourse to the common law tradition – in which torts were civil wrongs for which the responsible party was legally liable – this conceptualization grasped war as a private relationship and governments’ responsibilities in war as legal liabilities.

Breaches of the rules of war as illegalities. A somewhat different legal problematization of war was proposed by Moynier. Like Morin and Rolin-Jaequemyns, he suggested that

¹⁰⁴ Achille Morin, “Lettre à Gustave Moynier,” 28 May 1872, in Gustave Rolin-Jaequemyns, “Note sur le Projet de M. Moynier, relatif à l’Etablissement d’une Institution Judiciaire Internationale, Protectrice de la Convention, avec lettres de MM. Lieber, Ach. Morin, de Holtzendorff et Westlake,” *Revue de Droit International et de Législation Comparée* 4 (1872), 325-346, at 336).

¹⁰⁵ Rolin-Jaequemyns, “Note sur le Projet,” 342.

it was ultimately the governments who – not intentionally, but through negligence or ignorance – were responsible for “all war’s ills” and who should therefore be made to “bear the consequences.”¹⁰⁶ In contrast to his colleagues, however, Moynier argued that there ought to be “a penal sanction against those who would violate [the 1864 Geneva Convention].”¹⁰⁷ It was to this end that he proposed the creation of an “international judiciary institution” which would judge the guilt or innocence of those accused of having violated the convention. Moynier’s proposal was an eclectic legal conceptualization of “violations” or “infractions” of the Geneva Convention based on both civil and penal law. On the one hand, as for Morin and Rolin-Jaequemyns, these violations were “torts,” or breaches of a private contract¹⁰⁸; yet on the other hand, they were also “illegalities,” or acts for which both individuals and governments could be “culpable” and penalized accordingly.¹⁰⁹ As for enforcement mechanisms for the court’s sentences, these were both “damages” or “interests” a government would pay to repair the injury that had occurred in its contractual relationship with another government *and* “penal sanction[s]” or financial “punishments” governments had to pay for the unlawful acts committed by their “authorised agents.”¹¹⁰ At the time, Moynier’s proposal received only a moderate amount of critical attention¹¹¹, and Moynier himself did not pursue it further.¹¹² Yet precisely because of its location on the margins of legal discourse, the proposal demonstrates the outer limits of how war and war-time violence were thinkable and problematizable in the legal imagination of the day.

¹⁰⁶ Moynier, *Note sur la création d’une institution judiciaire internationale*, 7f.

¹⁰⁷ *Ibid.*, 1.

¹⁰⁸ *Ibid.*, 2.

¹⁰⁹ *Ibid.*, 6f.

¹¹⁰ *Ibid.*, 1, 7. The civil-penal character of Moynier’s proposal was also noted by Rolin-Jaequemyns, who commented on “l’établissement, proposé par M. Moynier, d’une véritable *cour criminelle internationale*, avec pouvoir de statuer sur les actions civiles en dommages-intérêts, aux quelles les faits incriminés donneraient naissance” (Rolin-Jaequemyns, “Note sur le Projet,” 340).

¹¹¹ Cf. Lewis, *Birth of the New Justice*, 18.

¹¹² Later on, Moynier conceded that many of the points his colleagues raised against his proposal had been “very fair” (Moynier 1892, handwritten note on the binding of a copy of his 1872 *Treatise sur la Création de une Institution Judiciaire Internationale*, Library of the University of Michigan Law School).

Knowing war

Rolin-Jaequemyns' "way of appreciating, from the point of view of International Law, the facts of the last war."¹¹³ In his quest to evaluate a welter of contending claims about the Franco-German War¹¹⁴, Rolin-Jaequemyns – by his own account – proceeded in three inferential steps: two steps for establishing the truth of a knowledge claim, and a third step for assessing this knowledge claim in light of the laws of war. The first step in establishing the truth of a claim about epistemic objects such as war and war-time violence was to appreciate their *a priori* properties. Applying one of the "elementary rules of historical critique," this meant to appraise the "intrinsic possibility or likelihood" of the various assertions one was confronted with.¹¹⁵ This *a priori* assumption then made for the starting point of the investigation. Thereafter, the second step in establishing the truth of a knowledge claim consisted in the collection and analysis of empirical evidence or "external proofs" for the alleged facts. The significance of "external proofs" for the overall evaluation of the truthfulness of a knowledge claim depended on what one already knew of an object *a priori*:

"The dispositions with which we approach the question of external proof largely depends on the degree of their intrinsic probability or likelihood. An unlikely fact could be true, but it will only be accepted on the basis of more positive and complete proofs than an *a priori* likely fact would require for being proven."¹¹⁶

With regard to the facts of war, Rolin-Jaequemyns distinguished between five classes of external and "serious proofs." In descending order of reliability and usefulness, these were written documents issued by the government against whose alleged wrongdoing they were to serve as evidence; written documents issued by the government which accused its opponent of wrongdoing, and which at the time had not been contested by the government so accused; written documents issued by the

¹¹³ Rolin-Jaequemyns, "De la Manière d'apprécier."

¹¹⁴ Cf. Rolin-Jaequemyns, *La guerre actuelle*, 39f.

¹¹⁵ Rolin-Jaequemyns, "De la Manière d'apprécier," 491.

¹¹⁶ *Ibid.*

accusing side and officially contradicted by the accused; testimonies of known witnesses; and testimonies and documents of anonymous sources.¹¹⁷ Of these five kinds of external proofs, Rolin-Jaequemyns claimed to have made use only of the first two.¹¹⁸ His analysis arrived at verified facts by evaluating the quality or “exactitude” of these documents¹¹⁹, weighing contradictory external proofs against each other¹²⁰, and weighing external proofs against intrinsic likelihoods. In a third step, Rolin-Jaequemyns sought to establish the law applicable to these facts and to judge them accordingly. To do this, he argued, the study of the usual sources of law (“the treaties, the usages, and the general principles known in science and in practice”¹²¹) did not suffice: because of new developments (such as railroads and hot-air balloons), it was necessary to develop a new method for extending the “known law” through the “observation”¹²² of international relations.¹²³ With the law applicable to a fact thus established, Rolin-Jaequemyns finally evaluated this fact in light of the law. Only strict and methodical adherence to his three “principles,” Rolin-Jaequemyns claimed, would enable a true appreciation of the facts of the war – and this would also be “in the interest of historical truth.”¹²⁴

Not wanting to know the facts of the last war. Unlike their predecessors debating the Franco-German War, the Advisory Committee of Jurists did not seek to produce, evaluate, or otherwise discuss the facts of the war in whose aftermath it was meeting – in spite of initial plans for doing so. The original plans for the Permanent Court of International Justice, which would have seen the court established and setting about

¹¹⁷ *Ibid.*, 494f.

¹¹⁸ *Ibid.*, 495. Rolin-Jaequemyns was particularly sceptical of the fifth category of proof, which seemed to him to risk bringing “political and national passions” into the business of truth-seeking – which might make “our work, instead of a calm appreciation of the known facts, [...] the fabric of fantastic horrors.”

¹¹⁹ Rolin-Jaequemyns, *La guerre actuelle*, 11.

¹²⁰ Rolin-Jaequemyns, “De la Manière d’apprécier,” 496f.

¹²¹ *Ibid.*, 508.

¹²² Note that Rolin-Jaequemyns conceived of international relations – “relations between states” – to be “visible” (*ibid.*, 508) and that he criticized one of his critics for not having seen for himself any of the facts he asserted (*ibid.*, 499).

¹²³ Cf. *ibid.*, 511f.

¹²⁴ *Ibid.*, 505.

its work by the end of 1919, had foreseen mandating the court to investigate crimes committed during the First World War.¹²⁵ By the time of the committee's convention in the summer of 1920, however, the idea of having the Permanent Court of International Justice address the past war and its violence had been dropped. Therefore, the only time that the jurists on the committee came close to touching upon the facts of the past war was when, during their twenty-third session, they discussed Descamps' proposal for a High Court.

The Advisory Committee of Jurists' way of knowing. Amongst the Advisory Committee of Jurists, there was only scant debate about their methodology. An incidental remark by Loder claimed that "a system of negative proof [...] was always liable to cause difficulties."¹²⁶ Also, there was Descamps' contention that the committee had heeded "Descartes' methodical caution":

"[W]e devoted ourselves to our work, taking care to avoid a certain *a priori* scepticism which some affect, but applying to the study of the problems which lay before us Descartes' methodical caution which, when properly applied, is a very efficient means of throwing light upon doubtful points and the surest guarantee of attaining tangible results.

We commenced by a lengthy interchange of ideas and subjected our opinions, which sometimes differed widely, to severe cross-examination. In this atmosphere of free and active criticism our hope of obtaining general agreement gradually materialised and took definite shape."¹²⁷

In the first half of the statement, Descamps is referring to Descartes' "method of doubt," a methodical principle for casting universal and collective doubt upon all preconceived opinions, thereby setting them aside in order to arrive at foundational

¹²⁵ Draft invitation letter for the Advisory Committee of Jurists (File 21/180/88, June/July 1919, Archive of the League of Nations Secretariat).

¹²⁶ Advisory Committee of Jurists, *Procès-Verbaux*, 259f. This seems to conform with the general preference of legal epistemology, from the 19th century onwards, for certainty over doubt, or for verification or knowledge of the probable truth of a particular fact rather than falsification or knowledge of the certain untruth of a general statement (cf. Suzan Haack, *Evidence Matters: Science, Proof and Truth in the Law* (Cambridge, UK: Cambridge University Press, 2014), at 55f).

¹²⁷ Advisory Committee of Jurists, *Procès-Verbaux*, 752.

first principles. The procedure the jurists followed according to the second part of Descamps' statement, however, seems more akin to judicial procedures, in particular to those of the civil law/adversarial tradition¹²⁸, and perhaps also to a logic of induction – which would also be in line with the preference for certainty expressed in Loder's aversion against "systems of negative proof." In this reading, Descamps' invocation of Descartes should perhaps rather be understood rhetorically, as an appeal to authority – leaving the matter of the jurists' ways of knowing ultimately uncertain.

The impossibility of impartial knowledge about the past war. As to why they refrained from discussing or seeking knowledge about the First World War, the most important reason advanced by the members of the Advisory Committee of Jurists was their own incapacity for impartiality. On the one hand, this argument was politically convenient. According to the jurists' epistemological stance, true knowledge required impartiality and neutrality.¹²⁹ However, making good on this stance would have required for them to examine not only the central powers' motives and conduct of the war, but also the violence of their own governments' soldiers. What is more, this examination would have been pursuant to a German proposal for exactly this kind of inquiry.¹³⁰ To the

¹²⁸ Though as Jackson and Summers argue, the dichotomy between civil and common law, often also referred to as the adversarial and inquisitorial traditions, is an inherently limited way of thinking about criminal law and its ways of knowing (John D. Jackson, Sarah J. Summers, *The Internationalisation of Criminal Evidence: Beyond the Common Law and Civil Law Traditions* (Cambridge, UK: Cambridge University Press, 2012)).

¹²⁹ Initially (June 1919), the preference of the League's Secretary General, Eric Drummond, had been to have only jurists coming from the allied power on the Advisory Committee of Jurists, but not jurists from neutral powers (File 21/941/88, Archive of the League of Nations Secretariat).

¹³⁰ During the war, both the allied and the central powers had undertaken official fact-finding missions to document the violence perpetrated by the respective other side, and the information gathered by these initiatives had been fed back into the war propaganda, thereby fuelling the conflict. However, during the Paris Peace Conference, only the violence perpetrated by the central powers had been systematically looked into and criminalized – to the chagrin of the German and Austrian governments, who had continued to push for an "impartial" and "neutral" inquiry or an international court that would seek to establish the "truth" about the "crimes" committed by both sides (cf. Lewis, *Birth of the New Justice*, ch. 2). The allied and neutral powers had ensured the German and Austrian governments that, when plans for the Permanent International Court of Justice would be made, their proposals for an inquiry would be considered (Draft of letter of invitation to potential members of the Advisory Committee of Jurists, dated June 1919 (no day specified), File 21/180/88, dated 24 June 1919, Archive of the League of Nations Secretariat; the date on the folder indicates that the draft letter was probably created at least four days ahead of the German signature of the Treaty of Versailles on 28 June 1919). In August/September 1919, the inquiry was again seen as a pressing matter because of

members of the Advisory Committee of Jurists, it was therefore expedient to as far as possible avoid the subject matter of the First World War – and invoking their deficient capacity for impartiality served this purpose well. On the other hand, however, the jurists' doubts as to their own impartiality seem to have been genuine. De Lapradelle, for instance, was apprehensive that he could not "examine" the past war "cold-bloodedly": although he claimed to have ridded himself of any "belligerent spirit," he nonetheless feared that by "stirring up memories of the past," the Advisory Committee of Jurists might simultaneously stir up this very spirit and bring about renewed conflict, violence, and war.¹³¹ Therefore, although it generally seemed "necessary" to de Lapradelle and colleagues to examine the past war, their inability to be sufficiently impartial towards this particular object of knowledge led them to forego any actual examination of it.¹³²

The possibility of impartiality towards future war. Though de Lapradelle doubted that he and his colleagues could impartially know about or judge the First World War, he found it to be altogether possible for the committee to achieve impartiality in the construction of the future High Court envisaged by Descamps. For one, impartiality could come in degrees: de Lapradelle did not call for the Advisory Committee of Jurists to be absolutely, but only "to be sufficiently impartial." Moreover, just how difficult it was to suppress one's emotions so to achieve sufficient impartiality depended on the object of one's knowledge and judgment. Here, de Lapradelle claimed that the High Court would be "constructed *in abstracto*."¹³³ It was not to address the specific crimes committed during the First World War, but to deal with future crimes which were yet to be committed; moreover, these future crimes were not

"clauses of the Treaty with Germany, the Polish Treaty and other Treaties" (File 21/943/88, Archive of the League of Nations Secretariat). However, it ultimately remained unrealized.

¹³¹ Advisory Committee of Jurists, *Procès-Verbaux*, 500f. The official English translation of de Lapradelle's phrase seems to miss some nuances: "to examine" seems a more precise translations of the French verb de Lapradelle used, "regarder," than "to consider"; and "cold-bloodedly" seems a more fitting translation of the French expression "de sang-froid" than "coolly."

¹³² Cf. Advisory Committee of Jurists, *Procès-Verbaux*, 503 (Loder). See also Lewis, *Birth of the New Justice*, 80.

¹³³ Advisory Committee of Jurists, *Procès-Verbaux*, 500.

limited to “crimes against the rules of war,” but also included other kinds of international crimes.¹³⁴ Having thus abstracted the object which the High Court under discussion was to deal with, de Lapradelle argued that the members of the committee could be expected to engage with the idea of this court in a sufficiently impartial way. As the previous section has explained, the majority of the members of the Advisory Committee of Jurists disagreed with Descamps’ proposal for a High Court. None of them, however, objected to de Lapradelle’s conception of impartiality as a matter of freeing, to a sufficient degree, one’s ability to know from emotional bias – nor to his suggestion that they would be able to muster sufficient impartiality towards the abstracted crimes of war with which a future court would deal.

Knowledge practices and ways of knowing in Moynier’s “international judiciary institution.” The proposal for an international judiciary institution which Moynier put forth in the aftermath of the Franco-German War contained different fragments of a legal way of knowing war which lend themselves to being excavated. To start with, Moynier held it to be “most essential that the tribunal does not exercise an inquisitorial authority, and that, as a consequence, it never on its own initiative pursues the true or suspected violators of the convention.”¹³⁵ Instead, the tribunal was to take action only when asked to do so by an injured party, which for this purpose would have to conduct a pre-study [*examen préalable*] and submit it to the tribunal.¹³⁶ Moreover, Moynier specified that the tribunal was to submit the facts in question to an adversarial trial/cross-examination.¹³⁷ In conjunction with the stipulation that the tribunal was not to act inquisitorially, this suggests that Moynier had in mind a procedure similar to the one used in common law systems.¹³⁸ Finally, in order to “offer, theoretically at least, more certainty of impartiality [...],” Moynier’s proposal foresaw that the institution’s

¹³⁴ *Ibid.*

¹³⁵ Moynier, “Note sur la création d’une institution judiciaire,” 8.

¹³⁶ *Ibid.*, 9.

¹³⁷ *Ibid.*, 11.

¹³⁸ And thus, a procedure rather unlike the one used in the civil law systems with which, as a Swiss national, he was presumably more familiar.

bench would be of “a mixed or neutral authority.”¹³⁹ As de Lapradelle would have put it, Moynier was formulating his scheme for an international judiciary institution in the abstract, i.e. as an institution to deal with future wars – and he thus had few reservations about the possibility of impartiality.

The purposes of knowledge in Moynier’s proposal. One of the motivations behind Moynier’s proposal was that in the absence of the kind of institution he envisaged, it had been “difficult, indeed impossible, to arrive at a legal finding of and objection to the facts [of the Franco-German War].”¹⁴⁰ There were two reasons why this lack of legal knowledge constituted a problem. On the one hand, it made it “even more difficult to arrive at the penalization of the guilty and at the reparation of the harm they have caused.”¹⁴¹ On the other hand, Moynier hoped that the knowledge of war which the tribunal would produce would contribute, at least indirectly, to “forming and clarifying public opinion” and thereby to the cultivation of the moral consciences of soldiers and the general population.¹⁴²

Non-penal alternatives to Moynier’s proposal. Responding to Moynier’s proposal, both Holtzendorff and Rolin-Jaequemyns thought that it would be preferable to establish commissions of inquiry rather than an international judiciary institution. Holtzendorff suggested that each party to a war should establish a commission “composed of three members belonging to the belligerents and the neutral powers which, in case of a confirmed violation of the convention, would have to *immediately* determine [...] the state of the facts.”¹⁴³ This kind of commission, it seemed to Holtzendorff, would be

¹³⁹ *Ibid.*, 5f. Rolin-Jaequemyns fully agreed with this aspect of Moynier’s proposal (cf. Rolin-Jaequemyns, “Note sur le Projet,” 327).

¹⁴⁰ Moynier, “Note sur la création d’une institution judiciaire internationale,” 2.

¹⁴¹ *Ibid.* To the jurists writing in the 1870s, necessarily tied up with legal rules regarding the conduct of war came a will to know and a will to punish: as Rolin-Jaequemyns explained, “[i]t is [...] in accordance with our natural instincts and the requirements of social life that any juridical obligation be accompanied by means of verifying compliance and of castigating violations” (Rolin-Jaequemyns, “Note sur le Projet,” 339).

¹⁴² *Ibid.*, 9

¹⁴³ Holtzendorff, Franz von Holtzendorff, “Letter to Gustave Moynier, 25 February 1872,” in Gustave Rolin-Jaequemyns, “Note sur le Projet de M. Moynier, relatif à l’Etablissement d’une Institution Judiciaire Internationale, Protectrice de la Convention, avec lettres de MM. Lieber, Ach. Morin, de

preferable to a criminal tribunal because “the most important thing of all [...] would be an official [*authentique*¹⁴⁴] determination of acts which are contrary to the convention.”¹⁴⁵ Rolin-Jaequemyns was generally favourable of Holtzendorff’s idea, yet in lieu of distinct commissions of inquiry on each of the sides to a war preferred a united “committee of instruction.” Acting upon complaints issued by the “interested governments,” the committee

“would [...] delegate, if needed, one or several of its members to visit places, collect testimonies, etc., and make a report about everything, on the basis of which the full commission would then state [...] whether there had been, yes or no, a guilty offense against the Geneva Convention.”¹⁴⁶

Of “a character at once juridical and practical,” such a committee would be given the mission “not to judge and to sentence, but to *determine* and to *demand*,” i.e. “to work with the governments to provoke the redress of the abuse or the pursuit of the culpable.”¹⁴⁷ While Holtzendorff and Rolin-Jaequemyns’ commissions of inquiry were conceived as alternatives to Moynier’s international judiciary institution, they too took a generally affirmative stance on the state as part of the solution to the problem of war-time violence.

The contribution of knowledge about war to law’s efforts at ameliorating the conduct of war. More generally, the international jurists writing about the Franco-German War assumed that empirical knowledge of war would be at least indirectly helpful to legal initiatives for addressing war’s problematic aspects. First, they thought that law as a science was in the business of determining and evaluating the facts of war and that it could help resolve political conflicts by establishing truth:

Holtzendorff et Westlake,” *Revue de Droit International et de Législation Comparée* 4 (1872), 332-334, at 333f.

¹⁴⁴ According to Littré’s *Dictionnaire de la langue française*, one of the meanings of the term “authentique” was an act undertaken by a state or its agent: “Acte authentique, acte émané d’un officier public, accompagné de formalités et devant faire foi jusqu’à inscription de faux.”

¹⁴⁵ Holtzendorff, “Letter to Gustave Moynier,” 334.

¹⁴⁶ Rolin-Jaequemyns, “Note sur le Projet,” 343.

¹⁴⁷ *Ibid.*

“reliable/responsible [*sérieuse*] science – the science which studies, compares, considers the facts, history, the natural laws which guide the existence and development of people – is already an eminently pacifying force. ‘Science [...] unites the people, passions and whims divide them. In politics, science can diminish disagreement and contribute to the rapprochement of spirits which brings about the internal happiness of a people and its external power. [...] Science teaches the true, from which results the measure of the possible.’”¹⁴⁸

Secondly, it was through knowledge about war that international law could help to educate public opinion and, in particular, provide a counterweight to the conflict-inciting tendencies of the national presses. The intense press coverage of the Franco-German War had meant that

“there is not one episode of battle which escapes and is not known to all the world. It is as if entire populations were present in the theatre of combat. Insofar as they admire the courage of heroes, they also hear the heartbreaking cries of the victims, and partake in the horrible spectacles.”¹⁴⁹

This, to the jurists, was an unprecedented kind of situation. Like Moynier, Rolin-Jaequemyns worried that during war and thus in a time “when thinking tends to be as violent as actions,” public opinion could easily get carried away: there was a risk that “the victors and the vanquished [...] lose their exact measure for appreciating the things.”¹⁵⁰ Insofar as the task of the presumed science of international law was to “combat everything which could excite the nations to hate each other or to despise each other” and to create a “legal community between independent nations,”¹⁵¹ law and public opinion needed to work hand in hand: “The only means of avoiding a similar kind of catastrophe is to make a law of peoples and a public opinion which do not permit to repress the rules [of the law of war].”¹⁵² Finally, knowledge about war

¹⁴⁸ Rolin-Jaequemyns, “De la Manière d’apprécier,” 479, quoting Felix E. de Parieu, *Principes de la science politique* (Paris, France: Sauton, 1870).

¹⁴⁹ Moynier, *Étude sur la Convention de Genève*, 12.

¹⁵⁰ Rolin-Jaequemyns, *La guerre actuelle*, 73f.

¹⁵¹ Rolin-Jaequemyns, “De la Manière d’apprécier,” 520.

¹⁵² Griolet, “Communication,” 47.

could improve international law and make it a more effective means of addressing war. This was a generalization of Rolin-Jaequemyns' argument that to bring up to date the laws which were applicable to the facts of war, one needed to observe the reality of international relations: "Exact knowledge of the facts, the application and the reasonable interpretation of the existing laws form the best base for [the laws'] improvement."¹⁵³ With improvements of international law, in turn, would come improvements in the conduct of war. Notably, in these three ways in which knowledge about war could help international law's effort at ameliorating the conduct of war, this knowledge was not intended to itself be a pedagogical tool. Rather, its significance lay in its contribution to an international law which was engaged in cultivating the moral consciences of combatants¹⁵⁴ and of the general public.¹⁵⁵

Estimating the damage due to looting. In concrete cases, however, Rolin-Jaequemyns and his colleagues did not always manage to resolve political conflicts by means of legal knowledge. During and after the Franco-German War, the governments on both sides had gone to great lengths in order to calculate the damage they had incurred due to looting. In this context, Griolet argued that a figure of 254.172.802 francs constituted the sum total of the damage German looting had caused France, and maintained that this figure "must be fairly accurate, not only because it was determined by estimates of cantonal commissions, but above all because these estimates were made in the presence of the interested parties who could have contested them."¹⁵⁶ Yet Rolin-Jaequemyns challenged this claim, pointing out that the table which Griolet had cited

¹⁵³ Rolin-Jaequemyns, "De la Manière d'apprécier," 519f.

¹⁵⁴ Consider, for instance, Holtzendorff's proposal that the governments ought to "bring to the recognition of the troupes" the Geneva Convention: "Les gouvernements s'obligeraient, soit dans les cours d'instruction militaire, soit au moment de l'explosion de toute guerre, à porter à la connaissance des troupes par une proclamation spéciale les principes de la convention de Genève, et à frapper les contraventions coupables à cette convention par des peines inscrites dans leurs codes militaires" (Holtzendorff, "Letter to Gustave Moynier," 333).

¹⁵⁵ On international lawyers' notion of a "conscience" which soliders (and societies) could "examine ... even in the midst of fighting" and which would induce them "to suppress their desire to engage in 'irrational' violence," cf. Koskeniemi, *Gentle Civilizer*, 88; cf. 47f.

¹⁵⁶ Griolet, "Communication," 39.

as evidence of the sum total of damages caused by German looting had been put together by the French government for an altogether different purpose:

“not in order to establish, by means of an international document including an element of cross-examination [*document contradictoire international*], the number of ravages committed by the Germans, but to determine, vis-à-vis the invaded departments, the sum of charges and damages of all kinds which have hit them during the war, whether the communities or the individuals.”¹⁵⁷

There are several interesting points to note about this discussion. First, Griolet and Rolin-Jaequemyns actually agreed that in order to accurately calculate the costs of a specifically problematic aspect of war, looting, the quantifying process should include an international element whereby the accused side would be invited to dispute the findings of the accusing side. The issue at stake between the two jurists was whether such a disputation had been part of the process through which the figure of 254.172.802 francs had been arrived at, and therefore whether this figure accurately captured the damage which German looting had caused the French. Secondly, the individual, an actor who was usually not considered to be a part of the problem of war in this period, suddenly became relevant to this problem as someone who was “hit” during war and who could testify to governmental authorities about this matter.¹⁵⁸ Finally, there was the politics of quantifying the problem of war: as Rolin-Jaequemyns questioned Griolet’s calculation for having taken into account only one of the two sides in the war¹⁵⁹, Griolet accused him of being “unfortunately under the influence of his all too strong sympathies for the German cause and Prussian politics.”¹⁶⁰ Pushed like this, Rolin-Jaequemyns backed down and argued that faced with accusations and counter-accusations, all that could retrospectively be known about many of the presumed incidents of looting was that “everything did not go too well.”¹⁶¹

¹⁵⁷ Rolin-Jaequemyns, “De la Manière,” 502.

¹⁵⁸ Cf. Griolet, “Communication,” 39.

¹⁵⁹ Rolin-Jaequemyns, “De la Manière,” 501ff.

¹⁶⁰ Griolet, “Communication,” 28.

¹⁶¹ Rolin-Jaequemyns, “De la Manière,” 504, fn.1.

Counting the dead. In another example of the quantification of the problem of war, Rolin-Jaequemyns drew on numbers of the dead and wounded to argue that the bombardment of Paris had actually spared the French side significantly higher losses and thereby to justify the German conduct of war. Calculating that “during twenty-six days of bombardment, Paris has lost 31 children, 23 women, and 53 men – 107 people have been killed [...], which makes for an average of around five per day,” and adding to this figure the “276 wounded of whom some have not survived their injuries,” Rolin-Jaequemyns granted that this was “without a doubt” a significant death toll, but nonetheless maintained that “in bombarding Paris, the German army could reasonably expect to advance by a couple of days a capitulation which was anyways inevitable.”¹⁶² Griolet’s refutation of this calculation of the human costs and benefits of the bombardment of Paris could hardly have been sharper: “*Quoi de plus humain! A few lives, often useless, for saving thousands of people!*”¹⁶³ Griolet took offense with Rolin-Jaequemyns’ argument not only because of its dismissive stance on the protection of civilians, but also because of Rolin-Jaequemyns’ calculus:

“There are individuals which human society would have an interest in excising, even though they are not guilty of any crimes. If one denied them a few years, a few days towards an anyways inevitable end, others could live and prosper in their stead. Who would dare to propose such acts of humanity! No one would have thought to apply this reasoning – the most hateful and most criminal which thinking could conceive of – to the conduct of war!”¹⁶⁴

In fact, Griolet was convinced that the reverse kind of calculation was far more appropriate – and that, therefore, “the lives of five little children which Prussian shelling has killed in their dormitory [...] ought to have been more respectable, more sacred than those of five thousand men on both sides of the rampart.”¹⁶⁵ In this instance, then, the quantification of knowledge about war – the counting of the dead

¹⁶² Rolin-Jaequemyns *apud* Griolet, “Communication,” 35.

¹⁶³ Griolet, “Communication,” 36.

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*, 37.

and wounded – in conjunction with ideas about the social utility of different groups (including but not limited to combatants and civilians) led to a range of conflicting utilitarian arguments about war.

Applying Quetelet's "social physics" to the Franco-German War. In his evaluation of the facts of the last war, Rolin-Jaequemyns drew on the "social physics" of Adolphe Quetelet to argue that "a certain amount of individual offenses" against the laws of war was in all likelihood inevitable.¹⁶⁶ In the mid-nineteenth century, the Belgian astronomer and mathematician Quetelet had, within newly available governmental statistics, observed the constancy of crime rates from one year to another. From this observation, Quetelet theorized people's "criminal propensities" to be brought about by causes resembling the law-like and mechanistic causes that could be found in the natural world.¹⁶⁷ This conceptualization of crime as a constantly occurring phenomenon and as part of a cause-effect relationship posed a challenge to the at that time predominant idea of the free subject who had chosen to become criminal out of their own volition. Instead, Quetelet distinguished between accidental, variable, and constant causes of crime – between incidental factors such as wars and natural disasters, volatile factors such as individual will and personality, and constant factors such as age, sex, and occupation – and found that the latter type of causes could be statistically correlated with crime rates.¹⁶⁸ As Richard Wetzell explains, Quetelet reasoned that because "crime was not a random individual act but strongly influenced by a variety of statistically measurable factors, including social factors, [...] society bore significant responsibility for crime,"¹⁶⁹ and he therefore argued that these social factors should be addressed by governmental policy. At the same time, Quetelet also made crime a phenomenon of deviance: by applying the principle of normal distribution around a mean to the phenomenon of crime, he cast "average man"

¹⁶⁶ *Ibid.*, 492f.

¹⁶⁷ Unless otherwise indicated, this paragraph draws on Peirs Beirne, "Adolphe Quetelet and the Origins of Positivist Criminology," *American Journal of Sociology* 92, no. 5 (1987), 1140-1169.

¹⁶⁸ Cf. Beirne, "Adolphe Quetelet," 1158.

¹⁶⁹ Richard F. Wetzell, *Inventing the Criminal: A History of German Criminology, 1880-1945* (Chapel Hill, NC: University of North Carolina Press, 2000), at 22.

[*homme moyen*] as “one who regularly chose the mean course between the extremes of deficiencies and excess,”¹⁷⁰ which implied that crime was a phenomenon located at the margins, far away from the mean. In sum, Quetelet’s work, enabled by the availability of a new kind of data, produced crime as a new kind of epistemic and actionable object.¹⁷¹

As Rolin-Jaequemyns’ argument introduced this object into his and his colleagues’ efforts at problematizing war, it thereby reproduced many aspects of Quetelet’s notion of crime. Rolin-Jaequemyns not only borrowed Quetelet’s data¹⁷², but also took up several of his theoretical ideas. For instance, assuming that both armies would have “a sincere desire to conform, in their conduct, with these principles [the laws of war],” Rolin-Jaequemyns distinguished between “permanent” and “accidental” causes which could interfere with and “trouble” this desire.¹⁷³ While he presumed that a number of “permanent” causes of crime – “age, sex, etc.” – were equally at work in both armies¹⁷⁴, he proposed for several “accidental” causes of criminality – the class background from which soldiers were recruited, their “moral and intellectual level,” and the armies’ organization and discipline – to vary between the armies. This led Rolin-Jaequemyns to constate a difference in the likelihood with which members of the two armies would commit offenses.¹⁷⁵ This *a priori* likelihood then served as a background against which the aforementioned “serious proofs” were to establish the truth or falsity of accusations of offenses. Thus, to render war-time violence into a knowable object, Rolin-Jaequemyns adopted several central aspects of Quetelet’s conception of crime – including the notions of crime as knowable through large numbers of observations, as caused (in the abstract, if not in individual cases) by social factors, and as addressable by governmental action – into his proposal, thereby

¹⁷⁰ Beirne, “Adolphe Quetelet,” 1159.

¹⁷¹ Cf. Alain Desrosières, *The Politics of Large Numbers: A History of Statistical Reasoning*, Translated by Camille Naish (Cambridge, MA: Harvard University Press, 1998 [1993]), at 68.

¹⁷² To crudely extrapolate the German and French army’s likelihood to commit offenses against the laws of war – cf. Rolin-Jaequemyns, “De la Manière,” 492, fn. 1.

¹⁷³ *Ibid.*, 491.

¹⁷⁴ *Ibid.*, 492.

¹⁷⁵ *Ibid.*, 493.

transferring these to the domain of international law.

However, there was also one detail of Quetelet's conception of crime which Rolin-Jaequemyns explicitly disputed: namely, the assumption that the figure of "average man" existed in war- as in peace-time. Here, Rolin-Jaequemyns argued that the longer a war lasted – the more soldiers "harden the soul as the body," the more "the sight of blood becomes familiar [...] while the sweet memory of the domestic hearth fades," and the more the "instinct of survival" was aroused – the higher the likelihood that soldiers would commit offenses against the laws of war.¹⁷⁶ Moreover, Rolin-Jaequemyns also contended "that any army attracts in its wake, besides crows and vultures, a swarm of men and women of prey, battlefield hyenas, camp and garrison leeches, waged international vermin, always hungry for corruption."¹⁷⁷ All in all, therefore, "so much for the average."¹⁷⁸ Hence, even in contradicting Quetelet's suggestion that "war itself was not a provocative cause of crime,"¹⁷⁹ Rolin-Jaequemyns reproduced aspects of Quetelet's conception of crime, such as the association of crime with deviance. Likewise, Rolin-Jaequemyns also joined in Quetelet's onslaught on the reasonable man [sic] of Enlightenment¹⁸⁰ – only that Rolin-Jaequemyns did not substitute this man with "average man," but with war-time man driven by instincts and passions.

Capable subjects of theoretical and practical legal knowledge. As the self-proclaimed "partisan of the law"¹⁸¹ Rolin-Jaequemyns put it, the jurists debating the Franco-German War conceived of themselves as being situated between "on the one hand the diplomats and statesmen who conclude treaties, direct the relations between people, etc., and on the other hand the sages who make books."¹⁸² Ideally, Rolin-Jaequemyns thought, he and his colleagues should split the difference. The "diplomats" could be

¹⁷⁶ Rolin-Jaequemyns, "De la Manière," 492f.

¹⁷⁷ *Ibid.*, 493.

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*, 492.

¹⁸⁰ Cf. Desrosières, *Politics of Large Numbers*, 79.

¹⁸¹ Rolin-Jaequemyns, *La guerre actuelle*, 39f.

¹⁸² Rolin-Jaequemyns, "Note sur le Projet," 345.

role-models for the practical and purposeful nature of their knowledge, which only had a “value” if it lend itself “to a positive and immediate application.” Meanwhile, from the “sages” the jurists could learn to think in general and logical terms, to seek “to view the facts from above, to discover their moral and juridical laws, to formulate the principles which the nations should obey.”¹⁸³ By combining these two ways of knowing, Rolin-Jaequemyns mused, the jurists could achieve “[t]rue theory, healthy theory”: unlike the kind of theory “which beats in the clouds [...] – it is that which is based on the rock of experience, on the study of moral dispositions and the actual necessities of humanity.”¹⁸⁴ For the jurists to base their way of knowing on “the rock of experience” did not mean that they would have attempted to produce immediately experiential knowledge of war or violence, however. Rather, it implied a mediated way of knowing war which combined theory with practice, law with politics, and observation of the external world with introspection into the individual and collective conscience/consciousness.¹⁸⁵ This way of knowing, as Koskenniemi has argued, not only contributed to “the emergence of a [new] professional self-awareness” amongst the international jurists weighing in on the Franco-German War.¹⁸⁶ It also produced these jurists as knowledgeable subjects of a new kind: as subjects who were steeped simultaneously in theory and in practice, they were capable of “[examining] facts in all conscience and seek to appreciate them in the light of reason.”¹⁸⁷

The impossibility of keeping separate law and politics – and theory and practice. Five decades later, the members of the Advisory Committee of Jurists also drew a distinction

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*

¹⁸⁵ Cf. Koskenniemi, *Gentle Civilizer*, ch. 1. On the ambivalence of the French term “conscience”: “On the one hand, as “conscience,” it looks beyond the vicissitudes of diplomacy towards the moral sentiments of European societies, a normative–psychological dictum about the deepest feelings about right and wrong in (civilized) contemporaries. On the other hand, as “consciousness,” it separates the true from the false, knowledge from superstition, employing a multilayered image of the human psyche at the top of which “consciousness” merges individual (subjective) understanding with that which is (objectively) true for everybody. To articulate and to represent this conscience became the task of the international law profession” (*ibid.*, 45).

¹⁸⁶ Cf. *ibid.*, 3f.

¹⁸⁷ Rolin-Jaequemyns, “De la Manière,” 484.

between theoretical and practical legal ways of knowing – between “*hommes d’étude*” and “*hommes pratiques*,” as de Lapradelle had it¹⁸⁸, or between theoretical abilities “acquired by scientific research” and practical abilities “obtained by experience,” as it was put by Rafael Altamira, the Spanish member of the committee.¹⁸⁹ Unlike their predecessors in the 1870s, however, these international jurists were not seeking to forge out for themselves an epistemic *via media*. They were keen to embrace the “entirely scientific” character ascribed to them by the League’s Secretariat and to avoid any semblance of taking politics into account.¹⁹⁰ However, as both their contemporaries¹⁹¹ and the members of the committee themselves¹⁹² noted, this aspiration proved impossible to realize: ignoring political questions – such as the representation of the major powers on the to be created Permanent Court of International Justice – would have weakened the institution the jurists were designing, and hence the committee ended up engaging in political considerations rather frequently.

With regards to this to be created court, too, the members of the committee initially held theoretical and practical abilities to be two very different animals. While Root emphasized that the judges on the new court’s bench should have “great judicial experience” so to be “in the habit of thinking judicially” and be endowed with “that broadmindedness which experience alone can bring,”¹⁹³ de Lapradelle stressed that “experience was only one form, or perhaps one source, of competence.”¹⁹⁴ Soon, however, the jurists came to realize that the court they were designing was going to rule in questions arising from and pertaining to an international realm which would for the first time ever constitute a “definite sphere” of practice, and hence that finding

¹⁸⁸ Advisory Committee of Jurists, *Procès-Verbaux*, 446.

¹⁸⁹ *Ibid.*, 450.

¹⁹⁰ Åke Hammarskjöld, Letter to Eric Drummond, 02.06.1920, File 21/4607/82, Archive of the League of Nations Secretariat.

¹⁹¹ Cf. Dionisio Anzilotti, Confidential report to Eric Drummond, 27.07.1920, File 21/5979/4959, Archive of the League of Nations Secretariat.

¹⁹² Advisory Committee of Jurists, *Procès-Verbaux*, 469 (Fernandes); cf. 106f. (Ricci-Busatti).

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*, 446.

candidates with prior practical experience was logically impossible.¹⁹⁵ To solve this problem, the jurists opted to discard the distinction between practical epistemological ability based on experience and theoretical epistemological ability based on scientific research and instead looked for candidates with a more general “well known ability in international law.”¹⁹⁶

When and from where to know about and address war?

Knowing war “as immediately as possible.” The international jurists debating the Franco-German War not only understood this war as a contemporary event, but more generally believed that it would be best to try and know war and war-time violence not retrospectively, but immediately. Moynier’s proposal of an international judiciary institution, for instance, foresaw for this institution to take action not after, but during war, “as immediately as possible.”¹⁹⁷ The two institutional alternatives which Holtzendorff and Rolin-Jaequemyns offered in response to Moynier’s proposal were likewise imagined to ideally take immediate epistemic action.¹⁹⁸ Such a “prompt confirmation of the state of facts, for example immediately after a battle,” Holtzendorff believed, “would have a more important moral signification and would contribute more to the observation of the Geneva Convention than an international penal procedure.”¹⁹⁹ Elsewhere, Rolin-Jaequemyns discussed the advantages and drawbacks of seeking knowledge about “contemporary events.”²⁰⁰ On the one hand, Rolin-Jaequemyns believed that “contemporary facts are hardly more difficult to establish than the facts of the past,”²⁰¹ yet on the other hand he cautioned that it would be “an error to think that because we are contemporary to an event, we must know it better

¹⁹⁵ *Ibid.*, 448 (Ricci-Busatti).

¹⁹⁶ *Ibid.*, 449 (Descamps).

¹⁹⁷ Moynier, *Note sur la création d’une institution judiciaire internationale*, 10.

¹⁹⁸ Cf. Holtzendorff, “Letter,” 333f.; Rolin-Jaequemyns, “Notes sur le Projet,” 343. To Rolin-Jaequemyns, this gave the committee functions similar to those of “the coroner and the jury which, in England, are charged with the inquiry [*enquête*] *super visum corporis* in case of a violent death” (*ibid.*).

¹⁹⁹ Holtzendorff, “Letter,” 334.

²⁰⁰ Rolin-Jaequemyns, “De la Manière,” 487.

²⁰¹ *Ibid.*, 487.

than whichever historical event."²⁰² He then compared "the situation of the jurist, the publicist, the statesman who wants to define a contemporary fact with that of the historian who would want to ascertain the same fact one hundred or two hundred years later"²⁰³:

"The first will undoubtedly have an advantage over the second: that of collecting a more vivid impression, of being able, consequently, to reflect this in the manner in which they expose the event. But alongside this advantage comes a drawback of at least equivalent proportions. That is that the material at one's disposal in the moment in which a historical event unfolds is necessarily incomplete. The witnesses' statements are generally passionate, partial: the resentment, the vanity, the patriotism, the interest or the political prejudice trouble the view, mislead the imagination and make the otherwise genuine lie."²⁰⁴

All things considered, however, Rolin-Jaequemyns concluded that while there was no ideal time for knowing war, it would still be best to seek knowledge about war as immediately as possible.

Knowing war from a national point of view. Another reason why Rolin-Jaequemyns ruminated that the facts of a war could only be "truly known" with a century or more of hindsight was that war's contemporary knowers were likely to be "thrown into a camp where their borders limit their horizons."²⁰⁵ He not only thought that the "sages" in the business of knowing law and war theoretically might "risk seeing [reality] through the deceptive prism of [...] national prejudices,"²⁰⁶ but also accused his French colleagues commenting on the Franco-German War of a pro-French bias – for they "belong to one of the nations engaged in the war, and consequently they themselves share in the cause, having remained in Paris during the siege, they were thus placed in the most feverish, most thunderous, most impressionable centre of the world."²⁰⁷ In

²⁰² *Ibid.*, 490.

²⁰³ *Ibid.*, 487.

²⁰⁴ *Ibid.*, 487f.,

²⁰⁵ *Ibid.*, 488.

²⁰⁶ Rolin-Jaequemyns, "Note sur le Projet," 345.

²⁰⁷ Rolin-Jaequemyns, "De la Manière," 485f.

fact, this allegation was Rolin-Jaequemyns' rebuttal to the colleagues who had accused him of pro-German bias: "we," Rolin-Jaequemyns argued, "do not actively mix ourselves with the facts of war."²⁰⁸ What is interesting about this is not whether Rolin-Jaequemyns and/or his French colleagues' allegations were correct, but rather to note how the existence of something like a national point of view constituted an epistemological bone of contention between them.

Knowing war, internationally. To counteract national bias, Moynier, as mentioned before, had foreseen for the judges on the bench of his international judiciary institution to be of a "mixed or neutral authority" so to "offer, theoretically at least, more certainty of impartiality, not being judge in its own cause."²⁰⁹ Five decades later, the Advisory Committee of Jurists went further than this, reasoning that the judges of the Permanent Court of Justice would achieve impartiality by internationalizing themselves. For the Japanese member of the committee, Mineichiro Adatci, this internationalization entailed "that the judges were to resign their national occupations in order to internationalise themselves" or also to "deify themselves."²¹⁰ For de Lapradelle, by contrast, their internationalization meant that "[t]he judges would not be denationalised but super-nationalised."²¹¹ Hence, to Adatci, their location within the international meant that the judges would transcend their national points of view to achieve something akin to a view from nowhere, whereas to de Lapradelle, becoming international meant to surmount and combine different national perspectives and so to attain a view from everywhere. These differences notwithstanding, both understandings assumed that internationalization helped impartiality.

"Civilization" in international legal arguments of the mid-nineteenth century. In deliberating all kinds of matters international, Rolin-Jaequemyns and his colleagues in the 1870s often drew on claims to "civilization" to support their arguments. As Moynier

²⁰⁸ *Ibid.*

²⁰⁹ Moynier, *Note sur la création d'une institution judiciaire internationale*, 5f.

²¹⁰ Advisory Committee of Jurists, *Procès-Verbaux*, 187.

²¹¹ *Ibid.*, 534.

explained on the opening pages of his *Étude sur la Convention de Genève*, “[t]hrough its evolution from the state of savagery, through that of barbarity, to that of civilization, [humankind] has, little by little, elevated itself to a healthier notion of its intellectual and moral nature and gradually shaken off the yoke of its brutal instincts.”²¹² The term “civilization” – a vague notion rather than a clearly specified concept²¹³ – carried with it ideas of historical evolution and progress.²¹⁴ It also construed the jurists, their societies, and their political projects – projects such as the problematization of war – in distinction to temporal and spatial others, the “savages” and the “barbarians” from whom contemporary European societies had developed and who still inhabited the non-European world.²¹⁵

“Civilization” in the arguments of the Advisory Committee of Jurists. In the Advisory Committee of Jurists, a notion of “civilization” was introduced when a discussion about how the different national legal systems currently co-existing in the world should be represented on the bench of the Permanent Court of International Justice had reached an impasse.²¹⁶ In this context, the assumption that these different national legal systems were but a “reflection”²¹⁷ of the difference between civilizations – that “it is the various shades of civilisation which create national groups,”²¹⁸ as Altamira had it – helped reconcile the jurists’ conflicting points of view on the matter. By allowing the jurists to hierarchically order different national legal systems according to how advanced or “backward” the civilizations from which they originated were²¹⁹ or according to how “central” or marginal these civilizations were within the

²¹² Moynier, *Étude sur la Convention*, 2.

²¹³ Cf. Koskenniemi, *Gentle Civilizer*, 103.

²¹⁴ On nineteenth-century international law’s conception of historical progress and its link to spatial expansion, cf. Caspar Sylvest, “‘Our passion for legality’: international law and imperialism in late nineteenth-century Britain,” *Review of International Studies* 34, no. 3 (2008), 403-423.

²¹⁵ Cf. Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, UK: Cambridge University Press, 2004), esp. ch. 2.

²¹⁶ Cf. Advisory Committee of Jurists, *Procès-Verbaux*, 200 (Descamps). For the solution eventually found, see Art. 8 of the draft scheme devised by the committee (*ibid.*, 710f.).

²¹⁷ *Ibid.*, 370 (Descamps).

²¹⁸ *Ibid.*, 369.

²¹⁹ *Ibid.*, 135 (Root).

international system²²⁰, the notion of “civilization” enabled them to come up with an allocation formula for distributing the seats “among the European, American, and Asiatic groups.”²²¹ At the same time, however, it was also possible for the jurists to think of the different civilizations as adding up to a “civilisation of the world”²²² and to imagine international law and the court they were constructing as reflective of this universal civilization.

The Franco-German War from the point of view of “civilization.” In the secondary literature, it has been argued that the Franco-German War demonstrated to the international jurists of the time “that humanitarian laws did not become applicable merely by the good will of the belligerents, even when they were undoubtedly civilized European nations.”²²³ For the jurists whose writings I am studying here, this was, in fact, not an immediately obvious insight, but a gradual realization. In the early days of 1870, Moynier had looked back on military campaigns waged from 1864 to 1868 and found in them much evidence of the progress of civilization. These campaigns seemed to him to bespeak “the effectiveness of the law of nations in attenuating the calamities of war” and hence to suggest that the Geneva Convention of 1864 had successfully created “an abyss between the past and the future.”²²⁴ Therefore, “[a]ppreciating from this point of view the current state of the civilized peoples,” Moynier was convinced that “we can easily see that the nineteenth-century civilization is superior to that of previous centuries, for never was human life better protected.”²²⁵ Later in the same year of 1870, Rolin-Jaequemyns’ comments on the by then ongoing Franco-German War were already more defensive about the issue of “civilization.” Noting that “philosophers” might take “these immense and methodical bloodbaths which one calls the battles, these ingeniously murderous inventions, these lands strewn with debris where everything literally exudes death, these burnt villages, these bombarded towns, this

²²⁰ *Ibid.*, 384 (Adatci).

²²¹ *Ibid.*, 200 (Descamps).

²²² *Ibid.*, 369 (Altamira).

²²³ Koskenniemi, *Gentle Civilizer*, 84.

²²⁴ Moynier, *Étude sur la Convention*, 23f.

²²⁵ *Ibid.*, 2.

starving capital” to imply that “the difference between the barbarian and the civilized man of the 19th century is much smaller than ordinarily thought,”²²⁶ Rolin-Jaequemyns wished to argue to the contrary. “It would already be an answer to them,” he thought, “to show them how much the patriotic motive, the national sentiment which animates the citizen-soldier today is superior to the *inconscience*, or: to the brutal greed of the erstwhile mercenary. Today, one fights for a cause. Back then, it was for a master.”²²⁷ Soon, however, this still positive outlook on the war reversed into its opposite. When, roughly a year after the Franco-German War had ended, Griolet contended that the war had “presented an ensemble of barbarian practices”²²⁸ and Bluntschli argued that the German bombardment of French towns had been “more reminiscent of the traditional barbarities of war than provided a new example of a more humane conduct,”²²⁹ neither Moynier nor Rolin-Jaequemyns objected. In this way, the Franco-German War had gradually become a problem from the point of view of “civilization.”

War as a problem for “civilized nations” to solve. On the matter of Descamps’ proposal for a High Court, Root, the US-American member of the Advisory Committee of Jurists, claimed that he “had long felt that it would be desirable to establish an understanding between civilised nations as to how crimes against universally recognised principles of humanity, justice and morality should be dealt with.”²³⁰ Root’s assertion betrays the universal aspirations of the jurists’ notion of “civilization”: while war and similar “crimes” were universal problems, it fell to the “civilised nations” to address these.

“Civilized” und “uncivilized” violence. For the most part, the jurists debating the Franco-German War drew on the notion of “civilization” to reason about themselves and their own armies’ conduct of the war. Civilization’s others only very occasionally appeared within these debates, only ever as secondary to the main argument, and never as the

²²⁶ Rolin-Jaequemyns, *La guerre actuelle*, 79. On Rolin-Jaequemyns understanding of theory and philosophy, see sec. 2 of this chapter. On “international law as philosophy,” cf. Koskenniemi, *Gentle Civilizer*, ch. 3.

²²⁷ Rolin-Jaequemyns, *La guerre actuelle*, 80.

²²⁸ Griolet, “Communication,” 46.

²²⁹ Bluntschli *apud* Griolet, “Communication,” 32.

²³⁰ Advisory Committee of Jurists, *Procès-Verbaux*, 505.

victims of violence.²³¹ Under the heading “*Employment of African troops*,” for instance, Rolin-Jaequemyns argued that the French government’s use of “savage troops who do not know the laws of military honour and of humanity” ought to be considered “in the same category as poisoned weapons”²³²:

“By employing these men who do not have any scruple to mutilate the wounded and finish them off on the battlefield, the French government has doubly failed in its international obligations, both towards the Arab tribes whose barbarity it has borrowed instead of communicating to them the proper ways of civilization, and towards the European nations which it threatened with this illegal weapon.”²³³

First and foremost, Rolin-Jaequemyns’ tirade was directed against France – which by employing African troops had failed both to accomplish its civilizing mission towards these non-Europeans “savages” *and* to comply with the laws of war which regulated its intra-European international relations.²³⁴ Secondly, by grouping them under the same category as poison – which the Lieber Code had recently outlawed as a weapon of war – Rolin-Jaequemyns also objectified the “savages troops.” His categorization likened these “uncivilized” others to a murder weapon which carried associations with malice, secrecy, insidiousness, and femininity²³⁵ and which, as Price has pointed out, was often “chastised as a weapon typical of savages and barbarians.”²³⁶

Descamps and violence against “uncivilized” others. According to Lewis, “[i]t is a grand historical irony that Descamps was the jurist who [in 1920] called for a High Tribunal to judge crimes against the universal law of nations, since fifteen years before he had

²³¹ The legal debates I am scrutinizing here took place just before the “new imperialism” that, at an increasingly accelerated pace from the late 1870s onwards, led to further imperial expansion into African and South-East Asian territories and soon thereafter to colonial wars such as the Boer Wars and the German war against the Herero and Nama in German South West Africa. What the jurists made of these wars is beyond the scope of this chapter, but cf. Koskenniemi, *Gentle Civilizer*, ch. 2, as well as Sylvest, “Our passion for legality.”

²³² Rolin-Jaequemyns, *La guerre actuelle*, 21, italics in original.

²³³ *Ibid*, 22.

²³⁴ Cf. Koskenniemi, *Gentle Civilizer*, 86.

²³⁵ Margaret Hallissy, *Venomous Woman* (New York, NY: Greenwood Press, 1987); Price, *Chemical Weapons Taboo*.

²³⁶ Price, *Chemical Weapons Taboo*, 26.

defended Belgian King Leopold II's extreme exploitation of the Congo."²³⁷ Perhaps, however, this was not so much ironical as rather only logical. To Descamps, the Congolese – and Africans more generally – were not “civilized.”²³⁸ Furthermore, he also believed that “civilization” was neither of recent origin nor arbitrary,” but “deeply rooted in history.”²³⁹ Finally, in support of his proposal of a High Court, Descamps cited the 1899 and 1907 Hague Conventions to argue that “the principles of the law of nations [...] result from the usages established among civilised peoples.”²⁴⁰ Taken together, these assumptions – that Africans were *per se* “uncivilized,” that there was an essential (or at least non-arbitrary) difference between “civilized” and “uncivilized peoples,” and that international law and its notion of criminality sprang, *inter alia*, from how “civilized peoples” conducted relations amongst themselves – suggest that to Descamps, the proposal of a High Court did not contradict his earlier defense of the murderous Congo Free State.

“Civilization” and racial hierarchy in legal ways of knowing war. In Rolin-Jaequemyns and colleagues’ mid-nineteenth century attempts at knowing war, the notion of “civilization” became coupled with assumptions of racial hierarchy. On the one hand, such assumptions informed the jurists’ ideas about the kinds of institutions that would be appropriate for knowing about and addressing war. In yet another alternative proposal to Moynier’s idea of an international judiciary institution, for instance, Lieber suggested a “reunion of the most eminent jurisconsults of the law of nations which our cis-Caucasian race possesses [...] to regulate amongst themselves certain big questions of the law of nations” (amongst which was the question of “the employment of barbarous troupes as auxiliary forces”).²⁴¹ On the other hand, assumptions of

²³⁷ Lewis, *Birth of the New Justice*, 84.

²³⁸ For instance, Descamps had foreseen that there should be European, Asiatic and American judges on the Permanent Tribunal of International Juristce’s bench, but no Africans (Advisory Committee of Jurists, *Procès-Verbaux*, 200) – a view shared by many of his colleagues.

²³⁹ *Ibid.*, 370.

²⁴⁰ *Ibid.*, 511.

²⁴¹ Francis Lieber, “Letter to Guillaume-Henri Dufour, 10 April 1872,” in Gustave Rolin-Jaequemyns, “Note sur le Projet de M. Moynier, relatif à l’Etablissement d’une Institution Judiciaire Internationale, Protectrice de la Convention, avec lettres de MM. Lieber, Ach. Morin, de Holtzendorff et Westlake,” *Revue de Droit International et de Législation Comparée* 4 (1872), 330-332, at 332.

hierarchically ordered racial difference also underlay the jurists' concrete epistemic practices. Hence, in the first step of Rolin-Jaequemyns' three-step method, the *a priori* probability of the truth of an alleged offense against the laws of war depended on the race as well as the "civilizational" stage of the accused. On the face of it, it was an argument about his and his fellow Europeans' "civilization" that led Rolin-Jaequemyns to profess that he believed

"in the power of the law, the progress of the mores and that of juridical ideas, also during war, as a direct result of the civilization of people. And this is why I refuse absolutely [...] to condemn, without sufficient proof, a civilized national to be guilty of having, collectively and at pleasure, trampled the most incontestable rules of morality and justice."²⁴²

Yet this argument, meant to absolve the French and German armies from any generalized guilt, implied as its flipside that Rolin-Jaequemyns

"would have far less trouble to believe in a simple newspaper report about pillage, massacres and other atrocities committed by a tribe of redskins than to believe, on the basis of an equal kind of testimony, in a similar kind of conduct on the part of a troop of Europeans."²⁴³

In this way, Rolin-Jaequemyns' pioneering "way of appreciating, from the point of view of International Law, the facts of the last war" was explicitly based on an assumption of racial and "civilizational" hierarchy.

Conclusion

How to conclude a chapter with so many beginnings? Researching and re-researching, writing and re-writing this chapter, I gradually left behind many of the apprehensions that had at one point or another formed my point of departure. After interrupting the

²⁴² *Ibid.*, 504.

²⁴³ Rolin-Jaequemyns, "De la Manière," 491. Conversely, he assumed that in the case of the Franco-German War, "both parties, due to the Christian, philosophical, and legal principles they had in common, would in principle be equally likely to adhere to the rules of the conduct of war" (*ibid.*).

work on Advisory Committee of Jurists to research and write about the Balkan Commission, my worry about doing “proper” historical research dissipated. Fortunately so, since the for my purposes most important primary source relating to the Advisory Committee of Jurists turned out to be its published *Procès-Verbaux*. My bother with periodization vanished in the face of the minutiae of legal discussions which were no easier to understand for being classified as belonging to this or that period, and which often enough did not conform to what this periodization would have led me to expect. For instance, Rolin-Jaequemyns and colleagues did see war, like Neff suggested, as a clash of governments and their political wills, but they did not do so “unashamedly.” Once I had realized (not least by way of Chapter 3) what it meant for my research to be concerned with “war” rather than with international law, it also seemed fine to leave unanswered Vec and Simpson’s question of how international law established its contemporary position vis-à-vis war and to focus instead on the emergence of the different ways of problematizing war which international law today affords. Lastly, as my appreciation of genealogy as an ongoing process and a critical praxis grew, my anxiety over matters of research design dissolved in equal measure.

As in the histories that it has researched, this chapter’s manifold beginnings have led on to other things, and, in frequently contingent ways, have ended up producing a heap of fragments of “war” and its violences as epistemic and actionable objects and as problems of international law and politics. To offer at least some minimal points of orientation for navigating these fragmentary materials, I want to conclude the chapter by drawing on the comparison – already implicit in the chapter’s organization – between the two legal debates the chapter has studied.

To start with, there are a number of points on which, if they had met, the two groups of jurists discussed in this chapter would probably have agreed upon. Rolin-Jaequemyns, Descamps, and their colleagues and interlocutors all shared a preference for problematizing war-time violence rather than war as such as well as a belief in the need for outfitting the laws of war with enforcement mechanisms. For both groups of jurists, an older view of war as a fateful *malheur* loomed, largely unnoted, on the

margins of their debates. Both groups of jurists assumed that knowledge about war would be more impartial and hence better if it was produced from an international point of view. Lastly, both groups assumed for themselves to be epistemologically capable subjects in particular insofar as they distinguished themselves within a “civilizationally” understood hierarchy – whether this understanding was discussed explicitly, as between Rolin-Jaequemyns and colleagues in the 1870s, or whether it was assumed implicitly, as between the members of the Advisory Committee of Jurists in 1920.²⁴⁴

Yet there are also many aspects in which the problematization of war in the mid-nineteenth century differed markedly from how war was legally problematized fifty years later. To start with, what kind of a problem did war constitute? Were violations of the laws of war civil wrongs, illegalities, offenses, or crimes? Was war a conflict between sovereign states only, or also a conflict between individuals? Indeed, were sovereign states part of the problem of war, as the members of the Advisory Committee of Jurists began to assume, or were they, to the contrary, part of the solution to this problem, as Rolin-Jaequemyns and colleagues steadfastly believed?

There are also a number of differences between the ways of knowing of these two groups of international jurists. Most apparently, although both groups of jurists worried about the impact of war reporting and propaganda on the general public's desire for war, they held diametrically opposed views about international law's capacity for ameliorating this fearmongering. While the jurists debating the Franco-German War believed that a legal evaluation of the most recent war and its violences, when used to educate the military and the general public, would be helpful for working towards a more peaceful future, their successors meeting in the aftermath of the First World War feared that such knowledge risked carrying the seeds of renewed conflict. Furthermore, Rolin-Jaequemyns and colleagues assumed for experience to play a certain role in the production of knowledge, yet this role would probably have

²⁴⁴ Cf. Lewis, *Birth of the New Justice*, 34f.

been rather unrecognizable to the members of the Advisory Committee of Jurists meeting fifty years later: for to Rolin-Jaequemyns and colleagues, experiential knowledge of the external world came necessarily coupled with introspection into individual and collective consciences and with the precondition of a priori likelihoods. At this point, two larger questions suggest themselves. How do this chapter's fragments of legal problematizations of war in the 1870s and 1920s compare to the previous chapter's findings about the problematization of war in the Balkan Commission's work? Also, as materials for getting to work on our contemporary world, what do these fragments tell us about the problematization of war in international politics today? For the moment, I want to defer these larger questions. I will get back to them in the conclusions of this thesis, yet prior to this, I want to focus more closely on one particular – and, today, particularly important – way of rendering war a legal problem suggested by the preceding chapter's analysis. To this end, the next chapter will study the criminalization of war in the aftermath of the Second World War. Yet still prior to this, a second reflective vignette offers a few further thoughts on my experimentation, throughout this chapter which has now reached its conclusion, with my practices of writing.

Reflective vignette 2

On practices of writing

Here is another part of the story, announced in the previous vignette, of my genealogical curiosity. Upon completing a first draft of the chapter on the Balkan Commission, I initially thought that I had figured out the way in which all of my historical chapters would be written – that I had found the elements my chapters would discuss, the form in which they would come together, and the practice through which I would realize and render their findings. I therefore started out on the next chapter, the one you have just read, in much the same way as I had on the preceding one: I identified an archive, read all the sources it contained, picked them apart into shorter snippets, and filed these under general headings, “understandings of war,” “knowing war,” “civilization,” “European modernity.”

At that point, however, the snippets I had collected refused to be formed into an integrated whole – and the work process I had established through the previous chapter ground to a halt. I pushed on regardless, ending up with a first draft of the chapter that consisted of nothing but fragments and contained not a single working hypothesis. I told myself that I would revise it later. It was only when a conference paper forced me to think about the methodological side of my project that I realized that, perhaps, what I had done to the practice of formulating working hypotheses was applicable to other knowledge practices; that, in fact, the chapter on the Balkan Commission had suggested at least two other knowledge practices for further scrutiny; and that, therefore, it might actually be feasible to leave the next chapter, the one you have just read, in the form which it had accidentally taken.

As with practices of thinking, practices of writing are political, too. “The orthodoxies of our social and political worlds,” Shapiro argues, “are recreated in the process of writing [...]. And no form of writing is exempt: analysis itself is a textual practice that

is intimately related to the political practices it aims to disclose.”¹ Thus, it is our scholarly practices of writing, “from what one chooses to reveal about oneself as a researcher to word choice to the construction of a logical argument,” as Yanow puts it, that “create the social reality one is writing about.”² And as with practices of thinking, practices of writing are also political in more than just one way. For one, they are political insofar as they help constitute – and discipline – our scholarly selves, the most readily available example being controversies over the use of the pronoun “I” in our academic texts.³ But as the analysis of the Balkan Commission’s practice of writing a report has suggested, there is more to this: our practices of writing help produce us in relation to the objects and the subjects we are studying. It is for this reason that Swati Parashar asks not only “who is inside the war and who is outside,” but also “who is writing about the war and how.”⁴

If we want our texts to be compelling, our practices of writing have to meet certain expectations, and these expectations place limits on how we can write, including on how we can write about war and its violences. Consider, for instance, the expectation of logical cumulation and subsumption. As Yanow describes it, this expectation recognizes rigor in “the crafting of a sound argument, in which observations build upon observations, sentences upon sentences, paragraphs and sections upon themselves, until *the logic of the whole* compels reason to say, Ah, yes, this makes sense as an explanation!”⁵ As this expectation calls for a practice of writing that ties up (i.e. makes fit or else cuts) all loose ends so to provide the text with an overarching

¹ Michael J. Shapiro, “Textualizing Global Politics,” in James Der Derian, Michael J. Shapiro (eds.), *International/Intertextual Relations: Postmodern Readings of World Politics* (New York, NY: Lexington Books, 1989), 11-22, at 18. Cf. Cecilie Basberg Neumann, Iver B. Neumann, “Uses of the Self: Two Ways of Thinking about Scholarly Situatedness and Method,” *Millennium: Journal of International Studies* 43, no. 3 (2015), 798-819, at 812.

² Yanow, “Thinking Interpretively,” 17. On writing styles in IR, cf. Neumann, Neumann, “Uses of the Self,” 813.

³ Cf. Hamilton, “Genealogy of Metatheory,” 145. On the use of the pronoun I, cf. Neumann and Neumann, “Uses of the Self,” 813; Naeem Inayatullah (ed.), *Autobiographical International Relations: I, IR* (London, UK: Routledge, 2010).

⁴ Swati Parashar, “What war and ‘war bodies’ know about international relations,” *Cambridge Review of International Affairs* 26, no. 4 (2013), 615-630, at 625.

⁵ Yanow, “Neither Rigorous Nor Objective?,” 72, my emphasis.

narrative, how does it shape whose voices and stories we integrate into our texts, and whose we exclude?⁶ Or consider the expectation that to be convincing, texts ought to tell us something new, yet not pose too much of a challenge to what we think we know already. As Crenzel shows for the final report of the Argentinian truth commission, the report's "narrative strategy" – which included the reproduction of survivors' testimonies – "impacted on the boundaries of the narrative itself," as the commission "excluded some episodes because of their extreme cruelty, fearing that this might undermine the credibility of the report."⁷

How do our practices of writing distance us from that which we are writing about? Contemplating this question, Raoul Hilberg contrasts three different practices of writing about the Holocaust.⁸ There was the purely documentary approach taken by the research staff at Yad Vashem during the early 1950s, who believed "that there should be no analytical writing about the Holocaust."⁹ Then, there was the approach of reportage, whose "authors [...] espouse actuality, but that is not to say that they have replicated it."¹⁰ Finally, there was academic and literary writing about the Holocaust, about which Hilberg asks: "How much more removed from the actuality of reportage are those works whose authors have introduced a theory or theme or just a visible thought to which the evidence has been subordinated?"¹¹ For Hilberg, there is no way in which historians could write about the Holocaust that would not distance them from the reality they are writing about. Citing Adorno's famous dictum on the barbarity of writing poetry after the Holocaust, Hilberg therefore wonders "that if the statement is true, then is it not equally barbaric to write footnotes after Auschwitz?"¹²

⁶ See also Perry Zurn's contributions in Koopman, "Ways of Doing Genealogy."

⁷ Crenzel, "Argentina's National Commission," 187. On different truth commissions' practices and processes of writing, see also Chapman, Ball, "Truth of Truth Commissions."

⁸ Raoul Hilberg, "I Was Not There," in Berel Lang (ed.), *Writing and the Holocaust* (New York, NY: Holmes & Meier, 1988), 17-25. Hilberg carefully distinguishes the Holocaust as subject of writing from war and war-time violence. Yet his reflections nonetheless seem pertinent to the question of how I, how we write about war. Thanks to Dvora Yanow for recommending Hilberg's text to me.

⁹ *Ibid.*, 21f.

¹⁰ *Ibid.*, 22.

¹¹ *Ibid.*

¹² *Ibid.*, 25.

Yet as Hilberg also notes, our practices of writing, the rules they follow, and the expectations they strive to meet evolve over time. If we find fault with how our practices of writing produce our analytical objects as well as ourselves and others as knowledgeable subjects, we can try to do better. By the time I was pondering this issue, about a year before the final submission date, my thesis had in some respects already reached a point of no return. It was no longer feasible, for instance, to find a way of including the voices of non-elitist actors in the project: the history of the problem of war I was writing would be a history of how this problem had been understood and produced by well-off, highly educated, mostly liberally minded and predominantly white and Western men. And because I was writing about how others had written about war, there was not much of a chance to include more “purely documentary” elements into the text. But what I could still experiment with – and in fact had, unwittingly, already experimented with – was the way in which I wrote (or put together) chapters. In this regard, I hope that having rendered more visible this crafting of a chapter gives an idea of how fragmented and messy the sources, the writing, and my own position and capability as the chapter’s author have been – and that, in turn, this may help to dispel any notion that I could have stood outside the history I was writing to de-scribe it as it really happened.

In fact, as Law notes, academic texts usually “hasten to describe, to refer to, a reality that lies outside them.”¹³ Law therefore wonders how we might write differently so to question “the referent, the out-thereness.”¹⁴ Because my efforts at changing my practices of writing ultimately remained so limited, I want to conclude this reflection with the example of a literary text that achieves a much farther-reaching change of practice.¹⁵ In *Am Beispiel meines Bruders*, Uwe Timm tries to find out and grapple with what his brother Karl-Heinz, who voluntarily joined the Waffen-SS and was killed in

¹³ Law, *After Method*, 12.

¹⁴ *Ibid.*

¹⁵ On the potential of literary texts, novels, poetry to challenge and change academic practices of writing, cf. Law, *After Method*, 11f.; Parashar, “War and war bodies,” 625. White, of course, argues that academic (specifically, historians’) texts are always already following literary conventions of emplotment (cf. White, *Metahistory*).

action on the Second World War's eastern front in 1943, did or did not do during the war.¹⁶ Timm relies on handed down family stories about his brother, on scholarly accounts of the war, but most crucially on his brother's war diary and letters to their parents. There is one entry, Timm says, at which his previous attempts at reading the brother's diary stopped. About an advance across a bridge, his brother writes: "*75m raucht Iwan Zigaretten, ein Fressen für mein MG.*"¹⁷ In this moment of having a cigarette, Timm wonders, what was this soldier thinking? What was his brother thinking about this soldier, and about the other soldiers and the civilians he encountered? What, had he survived the war, would his brother think about his younger self today? And what, though this last question is never posed explicitly, would Timm have done had he been old enough to join the army? Ultimately, Timm finds no answers. The sources are too fragmentary, they "betray neither the offender by conviction nor nascent resistance," but only the terrifying normalcy of war.¹⁸ Yet nonetheless, or perhaps precisely therefore, writing about his brother has changed Timm: to "approach him in writing is the attempt [...] to find oneself anew."¹⁹

¹⁶ Uwe Timm, *Am Beispiel meines Bruders* (Cologne, Germany: Kiepenheuer & Witsch, 2003). Translated into English as *In My Brother's Shadow*, Translated by Anthea Bell (London, UK: Bloomsbury, 2005).

¹⁷ *Ibid.*, 19, italics in original. "75m away, the Iwan [a pejorative term for a Soviet soldier] is smoking a cigarette, fodder for my machine gun."

¹⁸ *Ibid.*, 152.

¹⁹ *Ibid.*, 21.

Chapter 5

Looking beyond “Tokyoberg”: War as crime at the International Military Tribunal for the Far East, ca. 1946-48

Today, the International Military Tribunals (IMTs) at Nuremberg and Tokyo are one of the prime symbols of international law’s power vis-à-vis war. Never without giving a requisite nod to the differences between the “victor’s justice” of the IMTs and the UN-sponsored justice delivered by the international criminal trials of the 1990s and 2000s¹, scholarship across different fields of inquiry takes the proceedings in Nuremberg and Tokyo both as key historical antecedents of contemporary tribunals and as testament to the timeless value of international criminal trials for achieving justice and peace in the aftermath of large-scale collective violence.² In transitional justice research, for instance, the Nuremberg and Tokyo tribunals are invoked as a “first phase” in the history of transitional justice and, simultaneously, as a “symbol” of transitional justice’s promise to provide accountability, redress, and reconciliation to post-conflict societies.³ To scholars of international law, the Nuremberg and Tokyo trials, as legal precedents and as symbolic validation, serve to substantiate arguments promoting international criminal trials as instruments for the abolition of war and the eventual constitution of “a world community under law.”⁴ In IR, finally, the proceedings in Nuremberg and Tokyo appear as a case of ideational or normative

¹ Paradigmatically: Danilo Zolo, *Victor’s Justice: From Nuremberg to Baghdad* (New York, NY: Verso, 2009).

² Cf. Madoka Futamura, *War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy* (Abingdon, UK: Routledge, 2008), at 7.

³ Teitel, “Transitional Justice Genealogy,” 70.

⁴ Tor Krever, “International Criminal Law: An Ideology Critique,” *Leiden Journal of International Law* 26, no. 3 (2013), 701-723, at 708. Arguably, the Tokyo trial fulfils this function in a different way from the Nuremberg trial: it is not seen as an example to follow, but, owing to its perceived deficiencies, as “a precedent that legal history can only consider with a view not to repeat it” (Bassiouni cited in Gerry Simpson, “Writing the Tokyo Trial,” in Yuki Tanaka, Timothy L. H. McCormack, Gerry Simpson (eds.), *Beyond Victor’s Justice? The Tokyo War Crimes Trial Revisited* (Leiden, The Netherlands: Martinus Nijhoff, 2011), 23-34, at 30, fn. 37.

change, taking on a double role in disciplinary narratives of progress: as explananda, the trials are “the culmination of the best tendencies of the earlier [international] order,” whereas as explanantia, they are also credited with “[ushering] in a new and progressive world order.”⁵ It is to refer to this widespread analytical “legacy”⁶ of the Nuremberg and Tokyo tribunals – to their assumed significance as at once factual origin of contemporary international legal institutions and emblematic symbol of the value of these institutions for the progress of a common humanity – that Christopher Gevers has coined the term “Tokyoberg.”⁷

My aim in this chapter is to look beyond “Tokyoberg.” This endeavour has two sides to it. On the one hand, I take the Nuremberg and Tokyo tribunals not as origins or as symbols, but as examples within the wider genealogy of the problematization of war in international politics which my thesis advances. As the previous chapter has discussed, plans for criminalizing war had been formulated before, yet the IMTs marked the first time that war received a fully-fledged treatment as an international crime for which individuals were indicted, tried, and punished by international tribunals.⁸ Therefore, one of my purposes in this chapter is to look at how this criminalization implied war as an epistemic object and actionable problem. On the other hand, after the previous chapters’ experimentation with practices of thinking and of writing, I use this chapter to explore practices of looking. Specifically, I try out a different vantage point and field of view: instead of looking at the relevant archive in its entirety or concentrating on its most central contents, I focus on a small number

⁵ Latha Varadarajan, “The trials of imperialism: Radhabinod Pal’s dissent at the Tokyo tribunal,” *European Journal of International Relations* 21, no. 4 (2015), 793-815, at 801. For an example of this interpretation of the Nuremberg and Tokyo trials, cf. Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York, NY: W.W. Norton, 2011), at 5.

⁶ Affirmatively, Teitel, “Transitional Justice Genealogy,” 70. Critically, Futamura, “War Crimes Tribunals,” 7; Varadarajan, “The trials of imperialism,” 802.

⁷ Christopher Gevers, “International criminal law and individualism: An African perspective,” in Christina Schwöbel (ed.), *Critical Approaches to International Criminal Law: An Introduction* (Abingdon, UK: Routledge, 2014), 221-245, at 225.

⁸ “You can hold conferences on all of this, make treaties about it,” wrote Bert Röling, the Dutch judge on the bench in Tokyo, in his retrospective reflections on the trial, “but I think the fact that trials have taken place means perhaps more” (Antonio Cassese, Bernhard V. A. Röling, *The Tokyo Trial and beyond: Reflections of a peacemaker* (Cambridge, UK: Polity Press, 1993), at 90).

of texts which are located at the outer edges of the body of primary sources and which were written by authors bringing markedly different perspectives to bear on the Pacific War. Taken together, the chapter's discussion of the criminalization of war at the Tokyo tribunal and its experimentation with practices of looking seek to challenge the assumption of a unitary subject observing, knowing, and problematizing a unitary object.

Before venturing any further, I want to explain my delimitation of this final genealogical example, my use of primary sources, and my rationale for the exploration of practices of looking. As for the empirical scope of my analysis, my focus is on the notion of aggressive war as a *crime against peace*. The offenses tried at the IMTs in Nuremberg and Tokyo were not limited to aggressive war, but also included war-time atrocities and genocide – and the charges designed to cover these two other kinds of crimes constituted new developments within international law, too. While the charge of *war crimes*, a category previously applied only to war-time violence against civilians, was extended in scope to also encompass undue violence against enemy combatants, the charge of *crimes against humanity* was created to establish the criminal responsibility of senior leaders of the Nazi regime for the Holocaust.⁹ Since the focus of my inquiry is on the problematization of war, I take up these other kinds of violent crimes and the charges corresponding to them only insofar as they relate to the criminalization of war by means of the charge of *crimes against peace*.

As regards sources, the total number of relevant primary sources on the post-Second World War criminalization of war is difficult to estimate, yet the full extent of this archive is undoubtedly insurmountable for any individual research project.¹⁰

⁹ Cf. Donald Bloxham, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory* (Oxford, UK: Oxford University Press, 2001), ch. 1.

¹⁰ The Donovan Nuremberg Trials collection at Cornell University alone contains 150 bound volumes relating to the Nuremberg trial, amongst which 42 printed volumes plus approximately 4,000 further documents comprise the trial proceedings (cf. Daniel Smith, "The Legacy of Nuremberg: Sustaining Human Rights," *Cornell Law Forum* 25, no. 3 (1999)). Meanwhile, the transcripts of the proceedings, judgment, and dissents in Tokyo comprise almost 50,000 pages (cf. Varadarajan, "The trials of imperialism," 797). This does not yet take into account primary sources on the Allied planning for the trials, which span several years, countries, and archives.

Moreover, the relevant historiographical literature is hardly less extensive, and a notable strand within this secondary literature has already differentiated the aforementioned general critique of the Nuremberg and Tokyo trials as “victor’s justice” into more specific and empirically founded points of criticism.¹¹ All in all, it would have scarcely been possible to take either a fully comprehensive or a truly fresh look at the Nuremberg and Tokyo tribunals. It was initially in response to this challenge that I decided to focus on a particular bundle of primary sources: the dissents which the judges Henri Bernard from France, Bert Röling from the Netherlands, and Radhabinod Pal from India issued against the majority judgment of the Tokyo Tribunal.¹²

The three dissenting judges were jurists of varying legal backgrounds, convictions, and agendas. Bernard had previously been a colonial magistrate in the French West Africa.¹³ With no particular expertise in international law or East Asia and with English language skills insufficient for actually following the proceedings, he was appointed to the IMTFE, it has been suggested, in order to avert investigations into France’s cleansing policy in its imperial dominions in Indochina.¹⁴ Röling was a professor of criminology and a judge in the court of Utrecht with similarly little specific expertise in international law.¹⁵ Whatever the Dutch government’s motivation for appointing him – he himself thought that it was sheer “chance”¹⁶ – Röling ended up issuing his dissent against the explicit instructions of his government. Pal, finally, had previously

¹¹ Cf. Bloxham, *Genocide on Trial*, 4.

¹² To be precise, Bernard issued a “Dissenting Judgment,” Röling a “Separate Opinion,” and Pal a “Dissenting Opinion.” Two further separate opinions were issued by Justices William Webb from Australia and Delfin Jaranilla from the Philippines. Because they do not touch upon the criminalization of war as such, I did not include them in the scope of this chapter.

¹³ During his tenure, Bernard reportedly “once got into trouble [...] for supporting indigenous rights against white settlers,” and he later left his post temporarily to join the French Resistance (Mickael Ho Foui Sang, “Justice Bernard (France),” in Yuki Tanaka, Timothy L. H. McCormack, Gerry Simpson (eds.), *Beyond Victor’s Justice? The Tokyo War Crimes Trial Revisited* (Leiden, The Netherlands: Martinus Nijhoff, 2011), 93-102, at 94).

¹⁴ Cf. Casesse, Röling, *The Tokyo Trial*, 30; Sang, “Justice Bernard,” 96.

¹⁵ Cf. Robert Cryer, “Röling in Tokyo: A Dignified Dissenter,” *Journal of International Criminal Justice* 8, no. 4 (2010), 1109-1126.

¹⁶ Casesse, Röling, *The Tokyo Trial*, 19.

been a judge at the Calcutta High Court.¹⁷ His dissent has sometimes been made sense of in the context of India's political situation at the time: as Varadarajan points out, while India "had not borne the brunt of Japanese occupation during the war," it was "in the midst of an ongoing struggle for independence" from British colonial rule.¹⁸ Finally, the judges also had different reasons for their dissents: while Bernard and Röling wanted to lodge protest against specific aspects of the proceedings in Tokyo, Pal's dissent found all of the accused not guilty and amounted to a *tout court* rejection of the trial's conduct and outcome.¹⁹

The ways in which Bernard's, Röling's and Pal's dissents are marginal within the body of primary sources are illuminating to consider. On the one hand, these texts were marginal at the time of their issuance: they were not read out in court, and their authors did not participate in the deliberations that led to the formulation of the majority judgment.²⁰ On the other hand, Bernard's, Röling's, and Pal's dissents are accorded a comparatively marginal status in the secondary literature, including in recently emergent research focusing specifically on the Tokyo tribunal.²¹ What are the reasons for this paucity of inquiry? For one, there have been difficulties of access: the dissenting judges' opinions were not formally part of the Tokyo tribunal's jurisdiction and were only published by a Western university press several decades later.²²

¹⁷ Varadarajan, "The trials of imperialism." On Pal's academic background and political stance, cf. Elizabeth S. Kopelman, "Ideology and International Law: The Dissent of the Indian Justice at the Tokyo War Crimes Trial," *New York University Journal of International Law and Politics* 23, no. 3 (1991), 373-444; Adil Hasen Khan, "International lawyers in the aftermath of disasters: Inheriting from Radhabinod Pal and Upendra Baxi," *Third World Quarterly* 37, no. 11 (2016), 2061-2079.

¹⁸ Varadarajan, "The trials of imperialism," 795.

¹⁹ *Ibid.*, 794; cf. Bert V. A. Röling, "Opinion of Mr. Justice Röling, member for the Netherlands," in B. V. A. Röling, C. F. Rüter (eds.), *The Tokyo Judgment: The International Military Tribunal for the Far East (I.M.T.F.E.), 29 April 1946-12 November 1948, Vol. II* (Amsterdam, the Netherlands: APA University Press Amsterdam, 1977), 1041-1143, at 1045, 1065.

²⁰ Cf. Cryer, "Röling in Tokyo."

²¹ Varadarajan's critique on this point seems fair (Varadarajan, "The trials of imperialism," 794). A notable exception is Tanata, McCormack, and Simpson's edited volume *Beyond "Victor's Justice?"*, which not only devotes individual chapters to the three dissenting judges, but also offers a consideration of Pal's judgment as part of a history of the historiography on the Tokyo tribunal (Simpson, "Writing the Tokyo Trial").

²² Cf. Gevers, "ICL and individualism"; Simpson, "Writing the Tokyo Trial." Pal first published his dissent in 1952 with University of Calcutta Press. In 1977, it was reissued in the two-tome edition of the majority judgment and dissents edited by Röling and Rüter (Radhabinod Pal, "Judgment of Mr.

Another reason for the secondary literature's hesitation to engage the dissents is that in hindsight, these opinions – particularly Pal's – appear to have exerted "a strong influence on Japanese nationalism" and are therefore seen as politically tainted.²³ A third reason might be found in the context of how recent scholarship has more generally analyzed the Tokyo tribunal, namely in "an effort to rehabilitate the tribunal as an intrinsic part of the Nuremberg legacy."²⁴ Arguably, then, the three dissents issued in Toyko have been ignored not only because of their historiographical and political untowardness, but also because taking them into account could interrupt "Tokyoberg" as the dominant narrative about the significance of the Nuremberg and Tokyo trials for IR, transitional justice research, and international legal scholarship.

Thus, this source criticism brings me back to the core analytical aim of this chapter: to understand the post-Second World War criminalization of war, against disciplinary legacies of "Tokyoberg," as an example within the genealogy of the problematization of war in international politics. By looking at this example from the margins, my aim is not only to once more experiment with standard scholarly practices, but also to disturb disciplinary legacies of the IMTs as origins and symbols of the power of law over war in international politics. To this end, the analysis to follow is structured into three main sections. In the first section, I take international criminality to constitute a form given to a problem, and I probe this form by analyzing different approaches to

Justice Pal, member from India," in B. V. A. Röling, C. F. Rüter (eds.), *The Tokyo Judgment: The International Military Tribunal for the Far East (I.M.T.F.E.), 29 April 1946-12 November 1948, Vol. II* (Amsterdam, the Netherlands: APA University Press Amsterdam, 1977), 517-1040). It is on this 1977 edition that I rely in this chapter.

²³ Sang, "Justice Bernard," 94; cf. Varadaraja, "Trials of imperialism," 795. Scholars who have nonetheless inquired into the three dissents have often taken either an exculpatory or an outright hagiographic stance towards their authors. Sang laude's Bernard's "qualities as a judge" and his "independent and engaged character," Cryer designates Röling a "dignified dissenter," and Khan puts forth Pal as a role model for international lawyers. (Sang, "Justice Bernard," 93; Cryer, "Röling in Toyko," 1109; Khan, "International lawyers"). Generally, I agree with Nakajima Takeshi that the instrumentalization of the dissents by right-wing nationalists should motivate the continued critical study of these sources rather than their analytical neglect (Nakajima Takeshi, "The Tokyo Tribunal, Justice Pal and the Revisionist Distortion of History," *The Asia-Pacific Journal* 44, no. 3, 2011), 1-20, at 16). Moreover, my concern in this chapter is not with character studies of individual judges, but with what their dissents tell us about their – and our – imaginaries of the role of international criminal tribunals in the problematization of war.

²⁴ Varadarajan, "Trials of imperialism," 794.

criminalization and their inherent assumptions about the state of the international and the possibilities of progress. Thereafter, the chapter's second section inquires into controversies surrounding the Tokyo tribunal's ways of inference. I use this inquiry to reflect on knowledge practices, legal ways of knowing, and the figure of the judge as a specifically capable subject of knowledge; and I also ponder the question of knowledge's politicality. Finally, the third section looks at formulations of the problem of war – including, but not limited to formulations implied in the Tokyo tribunal's approaches to criminalization and legal ways of knowing.

Approaches to criminalization and conceptions of the international

When proceedings before the International Military Tribunal in Nuremberg commenced in November 1945, the defendants – all of them leading Nazi officials – were accused of “the formulation or execution of a common plan or conspiracy to commit [...] crimes against peace, war crimes and crimes against humanity.”²⁵ In the indictment, the waging of a war of aggression, grasped through the newly coined legal concept of crimes against peace, was the central charge around which the three other charges were structured. Its position as the superordinate crime under which war crimes and crimes against humanity were subsumed implied that the criminal responsibility of the accused for war-time atrocities and for the Holocaust was to be judged only insofar as these had contributed to the waging of aggressive war.²⁶ Furthermore, when combined with the charge of conspiracy, the reach of the crime against peace was extended so that the defendants could be tried not only for active participation in the commission of this crime, but also for participation in its

²⁵ Cited in Bloxham, *Genocide on Trial*, 17f.

²⁶ Cf. Simpson, *Law, War, and Crime*, 132f. For a critical examination of the consequences of making crimes against humanity an “accessory” of crimes against peace, cf. Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (New Haven, CT: Yale University Press, 2001), at 55ff.

planning.²⁷ The judgment of the IMT confirmed this four-count structure, as did the indictment²⁸ and the majority judgment of the IMTFE in Tokyo.²⁹

As scholars of legal history have pointed out, the central legal concepts employed by the IMTs in Nuremberg and Tokyo were the outcome of the frequently coincidental process in which plans for the post-war situation were developed.³⁰ In particular, the Allied powers had originally not envisioned that aggressive war itself could be a crime, and when they did decide to render it so, they initially intended for the crime against peace to be an *ad hoc* charge tried and judged *only* in Nuremberg.³¹ When the Tokyo trial later employed the concept of the crime against peace and the structure of charges associated with it, this became a cause for controversy among the judges. Judge Pal, for instance, argued:

“Law, no doubt, ends by being what it is made to be by the body which applies it to concrete situations: Yet the body called upon to apply it should not force it to be what it is not, even at the risk of missing the most attractive opportunity for contributing towards the development of a temptingly significant concept of international law, - I mean ‘the legal concept of the crime against peace.’”³²

Pal, that is, contested criminalization as a solution to the problem of war in international politics.

²⁷ On the controversy surrounding the temporal and spatial definition of these crimes, cf. Bloxham, *Genocide on Trial*, 17f.

²⁸ However, in Tokyo these four kinds of crimes were structured not into four counts, but into 55 counts summarized into three groups (cf. Futamura, *War Crimes Tribunals*, 64).

²⁹ Cf. Kirsten Sellars, *‘Crimes Against Peace’ and International Law* (Cambridge, UK: Cambridge University Press, 2015), at ix; Yuma Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (Cambridge, MA: Harvard University Press, 2008), at 81.

³⁰ Cf. Segesser, *Recht statt Rache*, ch. 5; Sellars, *‘Crimes Against Peace’*; Simpson, *Law, War, and Crime*, 143f.

³¹ Cf. Sellars, *‘Crimes Against Peace’*, 101f.; Totani, *Tokyo War Crimes Trial*, 21. Another interesting example of an unforeseen and unintended result of this convoluted process is the concept of criminal conspiracy: derived from US-American anti-trust law, the concept was originally introduced into the trial planning “to stretch available notions of criminality in order juridically to reach Nazi atrocities against the Jews,” yet ended up having precisely the opposite effect (Douglas, *Memory of Judgment*, 55; cf. Sellars, *‘Crimes Against Peace’*, 68).

³² Pal, “Judgment,” 577.

Taking these observations as my analytical point of departure, in this section I explore different approaches to the criminalization of war. To paraphrase Pal, I am studying how international law and criminalization were made, at the Tokyo tribunal, into means for problematizing war. After providing a brief explication of the approach to the criminalization of war taken by the majority judgment in Tokyo, I reconstruct the alternative approaches to the criminalization of war proposed by Bernard, Röling, and Pal. Moreover, since the purposes of criminalization depend on the social setting in which it is employed, I also examine these different approaches' presuppositions regarding the nature of the international and the possibility of international progress towards peace.

The IMTs in Nuremberg and Tokyo criminalized aggressive war through a combination of approaches. Legal theory at the time knew different kinds of crimes, including crimes against the person, crimes against property, crimes against the public peace, participatory or inchoate crimes (i.e. actions that contribute to the commission of another crime), statutory crimes (for instance, breaches of contract), and the crime of conspiracy.³³ In Tokyo, aggressive war was criminalized as a combination of these kinds of crimes. It was deemed criminal insofar as it constituted a first act of attack on another country, insofar as it was a trigger for other crimes, insofar as it was the object of a criminal conspiracy, and insofar as it violated international treaties – most importantly, the 1928 General Treaty for the Renunciation of War, more commonly known as the Kellogg-Briand Pact.³⁴

³³ For a contemporary example, cf. William L. Burdick, *The Law of Crime* (Albany, NY: M. Bender & Co., 1946). For a discussion of the history of these kinds of crimes, cf. Nicola Lacey, "In Search of the Responsible Subject."

³⁴ Cf. Sellars, '*Crimes Against Peace*', 103f.; Totani, *Tokyo War Crimes Trial*, 86. A further approach to criminalization undertaken in Tokyo was that of "negative criminality" – criminalizing the omission to prevent a criminal action when one would have been in a position to do so, for instance as a member of government. This notion of negative criminality was not applied to the crime against peace, but only – in Count 55 of the Indictment in Tokyo – to war crimes (cf. *ibid.*, 103).

Exemplifying these various understandings of criminality, the definition of aggression offered by Joseph Keenan, the US Chief Prosecutor in Tokyo, held aggression to consist in a

“first or unprovoked attack, or act of hostility; the first act of injury or first act leading to a war or controversy; an assault; also, the practice of attack or encroachment.

A nation that refuses to arbitrate or accept an arbitration award, or any other peaceful method, in the settlement of a dispute but threatens to use force or resort to war.”³⁵

On this definitional basis, the prosecution in Tokyo charged the accused with a whole list of individual incidents of aggression going back to the 1931 Mukhden Incident.³⁶ The defense challenged these charges of aggression by arguing that Japan had waged a war in self-defense.³⁷ Yet the majority of the judges in Tokyo rejected the defense’s argument, maintaining that “the right of self-defense does not confer upon the State resorting to war the authority to make a final determination upon the justification for its action.”³⁸

The IMTs’ criminalization of war (re-) produced, yet also challenged existing conceptions of state sovereignty and of the international. In some of its aspects, the criminalization of war by the post-Second World War IMTs consciously eschewed interfering with sovereignty as a key principle of international law. For instance, what Douglas has called the “piggyback[ing]” of crimes against humanity onto crimes against peace was, *inter alia*, conceived to enable the trial of the domestic crime of the Holocaust before an international court whilst leaving intact the more general principle of states’ unchecked sovereignty over their internal affairs.³⁹ In other aspects, the way in which war was criminalized in the IMTs actively bolstered the principle of sovereignty. For example, making aggressive war into a statutory crime insofar as it

³⁵ Quoted in Kopelman, “Ideology and International Law,” 393.

³⁶ Cf. Totani, *Tokyo War Crimes Trial*, 90ff.

³⁷ Cf. *ibid.*, 97.

³⁸ Quoted in Kopelman, “Ideology and International Law,” 393f.; cf. Totani, *Tokyo War Crimes Trial*, 90. For a discussion of the majority’s findings with regard to the various individual charges of aggression, cf. *ibid.*, ch. 4.

³⁹ Douglas, *Memory of Judgment*, 52.

was a breach of an inter-state contract reaffirmed sovereign states' exclusive rights within the international.⁴⁰ However, the criminalization of aggressive war in Nuremberg and Tokyo also contained challenges to traditional notions of state sovereignty. Such notions were put into question by the IMTs' attribution of criminal responsibility for aggressive war to individuals instead of to states – a “radical premise” and a “significant departure from previous practice,” as Sellars points out⁴¹ – as well as by the majority's argument that the authority for determining the legitimacy of a claim to self-defense lay not with the state making that claim.⁴² In sum, however, the challenges to sovereignty implied in the post-Second World War criminalization of aggressive war are comparatively minor ones: The Allied powers', and in particular the United States' overall purpose in criminalizing war was not to overhaul basic principles of the international order, but to maintain this order and to assert their place within it.⁴³

To varying extents and for varying reasons, Bernard, Röling, and Pal disagreed with the majority's approach to the criminalization of aggressive war and with its implied understandings of criminality and the international. For Bernard, aggressive war was not *criminalizable* through human action, “as a result either of custom, social convention, treaties or agreements,”⁴⁴ but was timelessly *criminal*: “such a war is and always has been a crime in the eyes of reason and universal conscience.”⁴⁵ Taking a natural law perspective, Bernard argued that neither the Kellogg-Briand Pact nor the charter of the Tokyo tribunal made aggressive war a crime; rather, these documents

⁴⁰ Cf. Sellars, ‘*Crimes Against Peace*,’ 108

⁴¹ Sellars, ‘*Crimes Against Peace*,’ 85; cf. Bloxham, *Genocide on Trial*, 20f.

⁴² Cf. Kopelman, “Ideology and International Law,” 393f.

⁴³ Cf. *ibid.*; Sellars, ‘*Crimes Against Peace*.’ In the words of Robert Jackson, the Chief Prosecutor at Nuremberg, the way in which aggressive war was criminalized in Nuremberg and Tokyo implied that “whatever grievances a nation may have, however objectionable it finds the *status quo* [of the international order], aggressive warfare is an illegal means for settling those grievances or for altering those conditions” (Jackson quoted in Sellars, ‘*Crimes Against Peace*,’ 118f.).

⁴⁴ Henri Bernard, “Dissenting Judgment of the member from France,” in B. V. A. Röling, C. F. Rüter (eds.), *The Tokyo Judgment: The International Military Tribunal for the Far East (I.M.T.F.E.), 29 April 1946-12 November 1948, Vol. I* (Amsterdam, the Netherlands: APA University Press Amsterdam, 1977), 481-496, at 493; cf. Sang, “Justice Bernard,” 96f.)

⁴⁵ Bernard, “Dissenting Judgment,” 490.

were “evidence” of a natural law existing independently of human volition or agency.⁴⁶ The assumption that aggressive war was criminal under natural law led Bernard to reject the defense’s argument that the Tokyo trial was violating “the principle of the non-retroactivity of laws” – if aggressive war had always been a crime, then the defense’s appeal to the rule of *nullum crimen, nulla poena sine lege* was meaningless.⁴⁷ Yet it also made him take an indifferent stance as to the majority’s various moves to criminalize aggressive war.⁴⁸

As for the international, Bernard understood it not as a separate social sphere constituted of relations between nation-states, but as a universal realm “shared by all individuals and all nations.”⁴⁹ This universal realm was regulated by a natural law “[existing] outside and above nations,” which meant that aggressive war was not an international, but a “natural” and “universal” crime. On the basis of this assumption, Bernard then argued that individual and collective criminal responsibility for the crime of aggressive war did not cancel each other out, but added to each other, and he therefore resolved to concur with the majority judgment’s conviction of the individuals accused of the crime of aggressive war.⁵⁰

Röling agreed with Bernard that the Kellogg-Briand Pact had not made aggressive war “criminal in the ordinary sense.”⁵¹ Yet finding that war was “only a crime *in statu nascendi*,”⁵² Röling was not convinced by Bernard’s argument that aggressive war was timelessly and universally criminal. Instead, he sought to further criminalize war by conceptual exegesis. Noting that “the word ‘crime’ in international law, as in domestic

⁴⁶ *Ibid.*, 489; cf. Sang, “Justice Bernard,” 98. Douglas suggests that the prosecution in Nuremberg and Tokyo sometimes steered into the direction of a natural law approach, too (Douglas, *Memory of Judgment*, 83f.).

⁴⁷ Bernard, “Dissenting Judgment,” 490.

⁴⁸ Already during the preparation for the IMT in Nuremberg, the French had taken a very different view of how to criminalize war – one which criminalized the war itself in consequence of the criminality of the Holocaust as well as war crimes (cf. Sellars, ‘*Crimes Against Peace*,’ 91ff., 131).

⁴⁹ Bernard, “Dissenting Judgment,” 494.

⁵⁰ *Ibid.*, 490; cf. Sang, “Justice Bernard,” 98.

⁵¹ Röling, “Opinion,” 1055.

⁵² Cassese, Röling, *The Tokyo Trial*, 65.

law, may indicate concepts of quite different nature,”⁵³ Röling found the available conceptualizations of the crime against peace wanting and argued that for the Tokyo trial to be able to try and judge the crime of aggressive war, it needed to conceptualize this crime differently. To this end, his suggestion was to render war criminal in a way

“comparable to political crimes in domestic law, where the decisive element is the danger rather than the guilt, where the criminal is considered an enemy rather than a villain and where the punishment emphasizes the political measure rather than the judicial retribution.”⁵⁴

Drawing on this idea of domestic political crimes as well as on older conceptions of criminal responsibility as founded in an individual’s nature⁵⁵, Röling reasoned that aggressive war could be made an international crime insofar as its authors were of a “dangerous character” and therefore constituted a threat to the security of the international community.⁵⁶ In the post-war situation with which Röling and his colleagues were dealing, the victors of the preceding war were in charge of protecting international society against this threat: as “powers victorious in a ‘bellum justum,’” they were “responsible for peace and order thereafter.”⁵⁷ In this situation, criminalization could be a legitimate and viable instrument for the problematization of war not in spite of its inevitable political aspect, but precisely because of it. Here, Röling was perhaps intentionally imprecise: reasoning that “the judicial way” of achieving international security both extended and exceeded “[m]ere political action,” his dissent left the relationship between law and politics ambiguous⁵⁸, and this vagueness in turn allowed him to mostly agree with the judgment which resulted from the majority’s combinatory approach to criminalization.

⁵³ Röling, “Opinion,” 1048; cf. Cassese, Röling, *The Tokyo Trial*, 66f.

⁵⁴ Röling, “Opinion,” 1060; cf. Richard H. Minear, *Victor’s Justice: The Toyko War Crimes Trial* (Princeton, NJ: Princeton University Press, 1971), at 53f.

⁵⁵ Cf. Lacey, “In Search of the Responsible Subject,” 357.

⁵⁶ Röling, “Opinion,” 1060.

⁵⁷ *Ibid.*, 1059; cf. Cassese, Röling, *The Tokyo Trial*, 65.

⁵⁸ Röling, “Opinion,” 1060. It was only in his later interviews with Antonio Cassese that Röling showed concern about the political element of the trial (Cassese, Röling, *The Tokyo Trial*, 65; cf. 70, 81).

In Röling's approach to the criminalization of aggressive war, the international featured as a problematically "underdeveloped" realm.⁵⁹ Its most important defect was the principle of "unlimited sovereignty," which came at the "price" of "an occasional war."⁶⁰ To ultimately overcome the problem of war, Röling maintained, "a community of nations must have developed which no longer tolerates violence between its members and in which war in a sense acquires the character of civil war."⁶¹ The Tokyo majority's various approaches to the criminalization of war would only make sense once such a community of nations was achieved. Moreover, the international was also underdeveloped with regard to its conception of the individual.⁶² While Röling did not object to trying individuals for international crimes and before an international tribunal, he thought that there was no international equivalent to "the principle of [individual] liberty" as it existed in domestic contexts "to protect citizens against the power of governments."⁶³ Individuals, unlike states, were no fully-fledged agents of or rights-bearers within the international, which was therefore not home to an actual, but only to a potential "world community."⁶⁴

This view of the international as an "underdeveloped" realm implied that its problematic aspects were improvable. On the one hand, although the Kellogg-Briand Pact had not actually restrained sovereignty, it seemed to Röling to have indicated "the willingness of the nations concerned to avoid war through peaceful resolution of conflicts" and their "preparedness to solve disputes even if that solution might entail the loss of historical rights."⁶⁵ Hence, the problem of war could be addressed by state actors willfully deciding to forego some of their long-established privileges. On the other hand, Röling also contended that the "dreadfulness" of war had the capacity to "compel the nations to take the legal steps to achieve the maintenance of peace."⁶⁶

⁵⁹ Cassese, Röling, *The Tokyo Trial*, 69.

⁶⁰ Röling, "Opinion," 1053.

⁶¹ *Ibid.*

⁶² Cf. Cassese, Röling, *The Tokyo Trial*, 68.

⁶³ *Ibid.*, 68f.

⁶⁴ *Ibid.*, 69.

⁶⁵ Röling, "Opinion," 1053.

⁶⁶ *Ibid.*, 1059; cf. Cassese, Röling, *The Tokyo Trial*, 56).

War's appalling nature, that is, contributed to its eventual overcoming. While I will explore this last point in more depth in this chapter's final section, what I want to note here is Röling's confidence in the principal improbability of the international.

Disagreeing with the majority judgment and with Bernard's and Röling's dissents, Pal argued that "no category of war became a crime in international life up to the date of commencement of the world war under our consideration."⁶⁷ Pal attacked the majority judgment's countervailing verdict relentlessly. First off, he disagreed that aggressive war was a crime under the Kellogg-Briand Pact: the pact did not specify a criterion for the determination of whether a particular war had been started in self-defense, in effect leaving the aggressiveness of war "unjusticiable."⁶⁸ More generally, while Pal agreed that a war undertaken "in violation of treaties, agreements or assurances" constituted "a breach of contract," he argued that such breaches of contract did not necessarily constitute international crimes.⁶⁹

Pal also disagreed with the proposals for the criminalization of aggressive war brought forth by Bernard and Röling. To invalidate the natural law-argument that aggressive war had always already been a crime⁷⁰, Pal distinguished between the theory and the practice of international law and denied the applicability of natural law arguments to the latter realm.⁷¹ Against Röling's proposal for criminalizing aggressive war by means of re-conceptualization, Pal argued that this amounted to "an appeal to the political power of the victor nations with a pretense of legal justice,"⁷² a course of argumentation which was unbecoming for a judicial tribunal: "we cannot behave in any manner which may justify the feeling that the setting up of the tribunal was only

⁶⁷ Pal, "Judgment," 579; cf. Kopelman, "Ideology and International Law," 410; Minear, *Victor's Justice*, 54. This conclusion formed part of the rationale for his famous dissenting judgment that "each and everyone of the accused must be found not guilty in each and every one of the charges in the indictment and should be acquitted of all those charges" (Pal, "Judgment," 1035).

⁶⁸ *Ibid.*, 563, cf. 569; cf. Minear, *Victor's Justice*, 54.

⁶⁹ Pal, "Judgement," 623.

⁷⁰ In his dissent, Pal actually attacks not Bernard's natural law approach to the criminality of aggressive war, but that developed by Hans Kelsen (*ibid.*, 614) – yet this comes down to the same kind of counter-argument.

⁷¹ Cf. *ibid.*, 551.

⁷² *Ibid.*, 1035.

for the attainment of an objective which was essentially political, though cloaked by a juridical appearance.”⁷³ Thus, where Röling had left the relationship between politics and law conveniently ambiguous, Pal pointed out the in his view thinly veiled political nature of the Tokyo trial’s criminalization of war.⁷⁴

Unlike Bernard and Röling, Pal also did not follow the majority’s stance when it came to holding individuals legally accountable for the crime of aggressive war. For many of his contemporaries’ approaches to the criminalization of aggressive war, Pal argued, individual criminal responsibility was merely added as an afterthought.⁷⁵ Yet he also objected to approaches to the criminalization of aggressive war in which individual criminal responsibility was put up front. Against a proposal which sought to criminalize aggressive war in analogy to international crimes for which individual criminal responsibility already existed, such as piracy, Pal demurred that these two kinds of acts were not actually alike enough to allow for such an analogical conclusion.⁷⁶ While “[t]he instances of [existing] criminal international law affecting individuals are all cases where the act in question is the act of the individual on his own behalf,” the act of aggressive war was of a different nature – it constituted “a particular kind of infringement upon the sphere of international relations” as a whole.⁷⁷ On the more general question of the individual as a rights-bearer and an agent in the international, Pal agreed with Röling that “it is high time that international law should recognize the individual as its ultimate subject and maintenance of his rights as its ultimate end,” yet contended against Röling that “[t]his certainly is to be done

⁷³ *Ibid.*, 1037.

⁷⁴ “Whatever view of the legality or otherwise of a war may be taken, victory does not invest the victor with unlimited and undefined power. [...] In my judgment, therefore, it is beyond the competence of any victor nation to go beyond the rules of international law as they exist, give new definitions of crimes and then punish the prisoners for having committed offence according to this new definition” (*ibid.*, 549).

⁷⁵ If aggressive war was to be criminalized through customary law, for instance, then this “custom to which reference is made is, at most, custom directed to sovereign states, not to individuals” (*ibid.*, 589f.).

⁷⁶ Pal, “Judgment,” 601.

⁷⁷ *Ibid.*, 946.

by a method very different from that of trial of war criminals from amongst the vanquished nations.”⁷⁸

A final reason for his rejection of the criminalization of war was Pal’s belief that the international “was not based on a footing which would justify the introduction of the conception of criminality.”⁷⁹ Citing the work of Georg Schwarzenberger⁸⁰, Pal argued that the international was not a community of nations founded upon the principle of solidarity and “united in spite of their individual existence,” but “at best” a society of nations founded upon the principle of self-help and “isolated in spite of their association.”⁸¹ The difference in organizing principles meant that law’s function in and for a community was fundamentally different from the role it played in a society. The law regulating relationships within a community, Pal held, “generally formalizes customary behaviour” and “finds its main justification in its application to abnormal situations,”⁸² in which it works to restrain and prevent “individualistic excess” through criminalization and punishment.⁸³ By contrast, “the law regulating the relations between the members of a society [...] is to prevent the *Bellum omnium contra omnes*, or to make limited co-operation possible between individuals.”⁸⁴ Societies were not “[bodies] of which the order or security could be said to have been provided by law,”⁸⁵ and they were “inapt for the introduction of criminal punishment.”⁸⁶ Therefore, so long as the international was a society and not a

⁷⁸ *Ibid.*, 577.

⁷⁹ *Ibid.*, 580.

⁸⁰ For an appraisal of Schwarzenberger’s work in the context of IR, cf. Lucian M. Ashworth, *A History of International Thought: From the origins of the modern state to academic international relations* (London, UK: Routledge, 2013), ch. 7.

⁸¹ Pal, “Judgment,” 652. Pal’s uses the terms “community” and “society” somewhat inconsistently, yet the idea he means to express by them – that there are different kinds of human associations, bound together by different principles, and that for these different kinds, the law plays different roles – seems to remain the same.

⁸² *Ibid.*, 652.

⁸³ *Ibid.*, 602.

⁸⁴ *Ibid.*, 652.

⁸⁵ *Ibid.*, 946, cf. 604f.

⁸⁶ *Ibid.*, 652.

community, it would be “premature”⁸⁷ to introduce criminality into international law.⁸⁸

Unsurprisingly, Pal’s take on the meaning and potential of international progress was radically different from the notions of progress held by his colleagues. In the majority’s as well as in Röling’s understanding, the abolition of aggressive war by means of criminalization was assumed to contribute to progress towards a peaceful international.⁸⁹ Yet Pal dismissed both the object of peace and the instrument of criminalization which these notions of international progress presumed. In general, Pal was uncertain about the ultimate attainability of peace within international society and wondered “if it is possible to create ‘peace’ once and for all, and if there can be a status quo which is eternal.”⁹⁰ Beyond such abstract questions, Pal also found that “in the present state of international relations [...] a static idea of peace is absolutely untenable.”⁹¹ The international as it was presently constituted was an hierarchical, unequal, and violent association of states. There were “still dominated and enslaved nations,”⁹² and worse still, the “domination of one nation by another continued to be regarded by the so-called international community only as a domestic question for the master nation.”⁹³ So long as this “servitude of nations still prevailed unreviled,”⁹⁴ Pal argued, the criminalization of war would not constitute peaceful progress, but would further the maintenance of the violent status quo. Indeed, in an international which achieved peace through the criminalization of aggressive war, “[p]eace [...] is only a negative concept – it is simply a negation of war, or an assurance of the status quo.”⁹⁵ By contrast, true international progress, in Pal’s vision, would require a far more

⁸⁷ *Ibid.*, 605.

⁸⁸ *Ibid.*, 603, cf. 946.

⁸⁹ Cf. Kopelman, “Ideology and International Law,” 413.

⁹⁰ Pal, “Judgment,” 611.

⁹¹ *Ibid.*; cf. Minear, *Victor’s Justice*, 60.

⁹² Pal, “Judgment,” 604.

⁹³ *Ibid.*, 574.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*, 604, cf. 740.

radical change of the status quo and the replacement of the international society with an international community.

To summarize, exploring criminalization as a way of problematizing war, this section has found various contested notions of criminality and approaches to criminalization. The majority judgment criminalized aggressive war on the argument that it was an attack on another country, violated international treaties, acted as a catalyst for other crimes, and constituted the object of a criminal conspiracy. Bernard and Röling disagreed with this combinatory approach to criminalization, yet found other ways to arrive at the conclusion that aggressive war was a crime: whereas Bernard stipulated aggressive war to be timelessly and universally criminal, Röling thought that aggressive war should be rendered into an international crime akin to domestic political crimes. Pal, finally, rejected the majority's as well as Bernard's and Röling's proposals and argued vigorously against both the criminality and the criminalization of aggressive war.

Crucially, these different approaches to the criminalization of aggressive war also encompassed divergent views of the international as the socio-political realm in which criminalization was to be effected. The dissenting judges disagreed with the majority judgement as well as among themselves about the international standing of individuals and about the nature of relations between states in the present moment. In addition, the primary sources also contain differing valuations of the present state of the international and, concurrently, of the necessity and meaning of international progress. In this context, the majority judgment can be read as an attempt to bolster the status quo of the international and as a vision of an "evolutionary" progress towards peace within the existing international order.⁹⁶ This made the criminalization of aggressive war into a tool of progress. By contrast, Röling's cautiously optimistic vision of how the problem of war could be overcome assumed that this would require altering some of the international's basic principles, including the principle of state

⁹⁶ Cf. Kopelman, "Ideology and International Law"; Sellars, *'Crimes Against Peace'*.

sovereignty. On this view, the criminalization of aggressive war was not a means for effecting this change, but rather would become most effective as a tool against war once this change had been achieved. Pal, finally, advocated the most radical vision of international progress. Pointing to historically and presently existing international relations of domination and violence, his dissent exposed the status quo of the international as anything but peaceful and argued that the criminalization of war amounted to a tool not for, but against true international progress.

Taken together, the analysis in this section suggests that as a tool for problematizing war, criminalization can be taken neither at face value nor for granted. For one, criminalization was not a purely legal tool. Underlying the different strategies for and against the criminalization of aggressive war were political motivations: while the majority judgment was eager to further the Allied powers' place in the international order and apprehensive to specify and apply the charges in a way that would not put these powers at risk of having their own conduct of the war put on trial, Pal's resolve to unmask how violence and inequality had been constitutive of the contemporary international order led him to reject treating as criminal any aspect of the Japanese conduct. Moreover, criminalization was not a readily and easily available tool for problematizing war. To the contrary, to render aggressive war into the crime against peace, the jurists gathered in Tokyo had to argue for and construct criminalization as a legal instrument. As a means for problematizing war, criminalization was not a given, but had to be produced, and this production was driven, on all sides of the debate, by political motifs.

From evidence to ultimate facts: contested practices of inference and the political nature of knowledge

Besides necessitating sustained argumentation, the criminalization of aggressive war also relied on and called for the production of empirical knowledge about war. Formally, the prosecution, defence, and judges in Tokyo were remarkably unfettered

in their knowledge-production procedures. Article 13 of the Tokyo Charter determined that “[t]he tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure.”⁹⁷ Yet in the actual conduct of the trial, the majority of its participants chose to rely on exactly the kind of technical rules to which they were not strictly bound. As Röling observed: “According to our Charter, technical rules of evidence would not apply. [...] But the tendency was to apply ever more technical rules.”⁹⁸ In this context, the three dissenting judges disputed not only some – or, in the case of Pal, all – of the “facts” about the war that the majority judgment produced, but also the practices and procedures through which the war was made first into an assortment of individual evidentiary facts and thereupon into a legally actionable *factum probandum*, the crime against peace. Bernard’s dissent straightforwardly called the tribunal’s procedures “defective,”⁹⁹ to which Röling concurred: “I had not much difficulty, in theory, with our Statute [...]. But in practice, I had many difficulties and misgivings.”¹⁰⁰

In this section, I attend to these contentions surrounding the epistemological aspects of the Tokyo tribunal. The first half of the section examines Bernard’s, Röling’s, and Pal’s objections to the kinds of evidence upon which the court based its work and the procedures by means of which the dissenting judges got from evidence to evidentiary and then to ultimate facts. In the section’s second half, I ponder what to make of these controversies surrounding the Tokyo tribunal’s inferential procedures. To this end, I gather what can be gleaned from the dissents in relation to a number of concepts developed in previous chapters. I conclude with reflections on the question of knowledge’s political nature.

⁹⁷ Cited in Minear, *Victor’s Justice*, 118. Art. 13 of the Tokyo Charter was “virtually identical with its Nuremberg counterpart” (*ibid.*). On the rules of evidence in Nuremberg, cf. Douglas, *Memory of Judgment*, 29ff.

⁹⁸ Casese, Röling, *The Tokyo Trial*, 50, italics in original. Similarly, Pal noted that while “the Charter released us from all technical rules of evidence,” the tribunal applied many rules “with meticulous strictness” (Pal, “Judgment,” 639, cf. 630).

⁹⁹ Bernard, “Dissenting Judgment,” 495.

¹⁰⁰ Casese, Röling, *The Tokyo Trial*, 51.

For analytical purposes, the proceedings of the Tokyo tribunal, from the taking of evidence to the formulation of the judgment, can be thought of as a sequence of inferential steps.¹⁰¹ The judges had to draw inferences about the truth of individual pieces of evidence, about individual supporting or evidentiary facts, about the ultimate fact or *factum probandum* of Japan's having conspired to and waged a war of aggression, and about the criminality of this war and the conspiracy thereto. Since the last section has already discussed the challenges involved in resolving aggressive war to be criminal, I here concentrate on the preceding three inferential steps and focus, in particular, on those aspects of the majority's implementation of these steps that Bernard, Röling, and Pal disagreed with.

With regard to the evidence to be used, the aforementioned Art. 13 of the Tokyo charter stipulated that the tribunal "shall admit any evidence which it deems to have probative value."¹⁰² In line with this rule, the IMTFE in Tokyo used different kinds of evidence – according to Röling, "779 affidavits, and altogether 4,836 documents, were produced in evidence, but we also heard 419 witnesses."¹⁰³ Overall, the judges had a preference for written materials. This was the case not only for the majority, but also for the dissenting judges: Röling's dissent, for instance, was based on both official and classified documents issued by the Japanese government¹⁰⁴ as well as on published memoirs¹⁰⁵, private letters¹⁰⁶, and diary entries of key actors.¹⁰⁷ There was a problem with this preference, however: under the leadership of US Chief Prosecutor Joseph Keenan, the International Prosecution Section – the agency which had been tasked with gathering evidence for the trial – had focused not on collecting written

¹⁰¹ This sequential ordering of inferential steps is meant as ideal-typical or analytical rather than actual – not least because there were allegations that the majority of the judges had agreed on the guilty verdict from the outset of the trial (cf. Sang, "Justice Bernard," 99).

¹⁰² Quoted in Minear, *Victor's Justice*, 118.

¹⁰³ Cassese, Röling, *The Tokyo trial*, 52; cf. Minear, *Victor's Justice*, 119.

¹⁰⁴ E.g. Röling, "Opinion," 1067, 1069, 1071f., 1075f., 1080ff., 1089f.

¹⁰⁵ E.g. *ibid.*, 1066, 1068, 1074.

¹⁰⁶ E.g. *ibid.*, 1068, 1073, 1077, 1080, 1089.

¹⁰⁷ E.g. *ibid.*, 1065, 1067, 1074, 1088.

documents, but on interrogating war crimes suspects.¹⁰⁸ Moreover, towards the end of the war, the Japanese government had destroyed many confidential documents.¹⁰⁹ In light of these problems, the Tokyo tribunal's preference for written documents was not implemented as systematically as that of its Nuremberg predecessor.¹¹⁰

Whether a written document or an oral testimony, every piece of evidence required the judges to ascertain its verisimilitude, and the practices by which the majority of the judges drew these inferences about the truth content of pieces of evidence were a first object of epistemological contention. The three dissenting judges criticized the majority's at best haphazard, at worst selective reliance on rules of evidence as well as its procedures of cross-examination. With regard to his colleagues' application of rules of evidence, Röling was dumbfounded at their practice of inferring the truth content of a piece of evidence on the basis of principled assumptions. He thought that the verisimilitude of every individual piece of evidence should be examined and judged "in relation to all the other evidence."¹¹¹ Like Röling, Pal also chastised his colleagues' method of determining the verisimilitude of pieces of evidence on principled grounds rather than on a case-by-case basis. He objected, for instance, to the judges' refusal to admit press releases issued by the Japanese government as evidence on the grounds that these constituted "pure propaganda and nothing else," "nothing but argument from the Japanese viewpoint."¹¹² Rejecting the "sweeping" assumption "that propaganda is *prima facie* a lie,"¹¹³ Pal found the majority's argumentation to be inherently biased:

"Even if these press releases be taken as 'painting with a Japanese brush a picture of events for consumption at home and abroad' this would present us with one version

¹⁰⁸ Cf. Totani, *Tokyo War Crimes Trial*, 32ff.

¹⁰⁹ Cf. Cassese, Röling, *The Tokyo Trial*, 47; Totani, *Tokyo War Crimes Trial*, 105f.

¹¹⁰ At the behest of US Chief Prosecutor Robert H. Jackson, the IMT in Nuremberg had systematically preferred written materials over eyewitness testimonies (cf. Bloxham, *Genocide on Trial*, 62; Douglas, *Memory of Judgment*, 16). These documents were collected mostly by the allied militaries and military intelligence services (Bloxham, *Genocide on Trial*, 58ff.).

¹¹¹ Cf. Cassese, Röling, *The Tokyo trial*, 53f.

¹¹² Pal, "Judgment," 643.

¹¹³ *Ibid.*

of the event, the prosecution having given us another version. It will be for us to decide which version we should accept. The prosecution version is also a version of a party. Some infirmity is likely to be present in both.”¹¹⁴

Pal’s counter-argument to the majority judgment’s position thus amounted to a refutation of the assumption that Japanese propaganda, in particular and in contrast to the propaganda of other powers, was “prima facie a lie.” Rather, “infirmity” was a mark of all propaganda.

In other instances, Pal disagreed with how his colleagues established the truth content of pieces of evidence through the application of rules of evidence, such as the best evidence rule:

“We sometimes rejected statements [...] if the statement happened to refer to the contents of any document and that document was not produced. We did not accept such statements even if it were certified by the requisite authority that it could not find the document now. We insisted upon a certificate that the document had been destroyed.”¹¹⁵

Pal found that the “meticulous strictness” with which the tribunal implemented the best evidence rule was both unwarranted in light of its charter’s stipulations and inconsistent with its execution of another rule of evidence, the hearsay rule. “I, for myself,” wrote Pal, “did not see much sense in the rule of exclusion at a trial where any amount of hearsay evidence had to be taken in.”¹¹⁶ As a general rule of procedure, Pal explained, the hearsay rule held that “[t]he opinions or beliefs of third persons are [...] no evidence at all, and therefore inadmissible. Witnesses are to state facts only, i.e. what they themselves saw or heard.”¹¹⁷ As a consequence of its charter’s lenient stipulations regarding rules of evidence, Pal argued, the tribunal had “admitted much material which normally would have been discarded as hearsay evidence”¹¹⁸ and had frequently relied on evidence whose truth content was dubitable at best.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*, 639.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*, 637.

¹¹⁸ *Ibid.*, 630.

The other kind of criticism which the three dissenting judges' directed at their colleagues' means for inferring the truth content of pieces of evidence concerned the conduct of direct and cross-examinations. For Röling, the issue was one of undue constraint in how he, as a judge, interacted with the defendants to determine the truth of their testimonies. As he recounted in his retrospective interviews with Antonio Cassese:

“Our President was a dictator. He didn't like to have us put questions. It was never forbidden, but he said, well, pass your question to me and I will put it to the witness. Perhaps I have forgotten, but I don't remember the judges ever putting questions to specific accused.”¹¹⁹

For Pal, by contrast, the issue was one of a flawed evidentiary procedure which implied that “the ability and the willingness of [the witnesses] to declare the truth remain untested.”¹²⁰ Pal criticized that “in lieu of presenting the witness for direct examination in court,” the judges frequently allowed the prosecution to use “the affidavit of the witness or his statement taken out of court, offering the witness only for cross-examination.”¹²¹ The problem with this was that not conducting direct examinations meant to forego a first opportunity for testing the “infirmities” of a witness's statement of fact. In addition, it also diminished later opportunities for such testing – for without a direct examination, there were no points of comparison through which to enhance one's understanding of the witness's appearance in the ensuing cross-examination. However, as Pal further criticized, in many instances the court also did not conduct cross-examinations – though it was only by cross-examination that the “infirmities with respect to the observation, memory, narration and veracity” of a witness “might be so far exposed [...] as to enable the judge fairly to evaluate the

¹¹⁹ Cassese, Röling, *The Tokyo Trial*, 52.

¹²⁰ Pal, “Judgment,” 1026.

¹²¹ *Ibid.*, 636.

utterance.”¹²² In sum, Pal admonished that the evidence derived through such procedures ought to be treated with “[m]uch caution.”¹²³

Determining the truth content of individual pieces of evidence was only the first step in a longer inferential process. Further steps were needed to get from pieces of evidence to evidentiary facts, and from evidentiary facts to the ultimate fact of a war of aggression and a conspiracy thereto. It is to Bernard’s, Röling’s, and Pal’s criticisms of different elements of the procedures through which the judges formed their conclusions about these different kinds of facts that I attend in the following paragraphs.

A first kind of processual criticism centered on when and by whom evidence was handled and interpreted to draw inferences. In this regard, the three dissenting judges pointed out a number of irregularities in how evidence was introduced into the court. Röling, for instance, complained that many pieces of evidence “were produced, first by the prosecution, later by the defence, in a more or less haphazard way, as it fitted their argument.”¹²⁴ The dissenting judges also lamented that procedural rules regarding the introduction of evidence into the court were executed inconsistently. Whereas Pal protested an instance in which procedural rules were sidelined so that a document could be “offered in evidence only after the defense closed their case,”¹²⁵ thereby making it impossible for the defense to react to it, Röling chalked down an instance in which rules of procedure were invoked to keep the corrected version of a document from being introduced into the proceedings.¹²⁶

The dissenting judges also disagreed with the tribunal’s distribution of the burden of proof regarding the evidentiary facts and the *factum probandum*. Bernard, for one, found fault with the majority’s idea that rather than the prosecution having to prove

¹²² *Ibid.*, 630.

¹²³ *Ibid.*

¹²⁴ Cassese, Röling, *The Tokyo Trial*, 52.

¹²⁵ Pal, “Judgment,” 633.

¹²⁶ Cassese, Röling, *The Tokyo Trial*, 53.

the guilt of the defendants, it was the defendants who had to prove their innocence.¹²⁷ Moreover, he criticized that in light of this logic of proof, it was highly problematic that the trial had neither included a “preliminary inquest conducted equally in favour of the Prosecution as of the defence by a magistrate independent of them both” nor any other equitable measure by means of which to ensure that the defence could “obtain and assemble elements” necessary for developing arguments about the evidentiary facts and the *factum probandum*.¹²⁸ In a similar vein, Röling was aghast that the court denied “the request of the defence to have access to the files of the prosecution to see whether they could find favourable evidence for their case.”¹²⁹ More generally, Röling was frustrated that in the overall logic of the trial, the judges had only limited knowledge of the full range of evidence: they knew only what the prosecution and defence introduced before them.¹³⁰ In this constellation, Röling criticized that “the prosecution withheld evidence from the Court that could favour the defence” and that “the judges were not informed of the difficulties in obtaining desired documents from the prosecution.”¹³¹

A final set of contentions relating to the handling of evidence for inferential purposes stemmed from the Tokyo Charter’s provision that “[t]he Tribunal may require to be informed of the nature of any evidence before it is offered so that it may rule upon the relevance thereof.”¹³² In their dissents, Röling and Pal pointed out that the majority used this stipulation to refuse evidence of the Allied powers’ plans for war.¹³³ For instance, as Röling recounted later, “the President stopped [the accused and the

¹²⁷ Cf. Sang, “Justice Barnard,” 97.

¹²⁸ Bernard quoted in Cassese, Röling, *The Tokyo Trial*, 52.

¹²⁹ “The prosecution objected vehemently to what they called ‘fishing expeditions’: the request of the defence to have access to the files of the prosecution to see whether they could find favourable evidence for their case. I thought this quite correct and proper. [...] But the Tribunal shared the opinion of the prosecution on this point” (Cassese, Röling, *The Tokyo Trial*, 51).

¹³⁰ Cf. *ibid.*

¹³¹ *Ibid.*, 60.

¹³² *Ibid.*, 59.

¹³³ Cf. Röling, “Opinion,” 1073. Pal even offered an entire list of evidence which was rejected in this way – such as „1. Evidence relating to the state of affairs in China prior to the time when the Japanese armed forces began to operate; 2. The evidence showing that the Japanese forces in China restored peace and tranquillity there ...” (Pal quoted in Cassese, Röling, *The Tokyo Trial*, 120).

defence] when they were about to speak of matters that were ruled out by the Court as being irrelevant, such as communist activity in China, the misdeeds of Allied governments or troops, and so on.”¹³⁴ By invoking a lack of probative value, Röling and Pal argued, what the court did was to prevent the introduction of evidence that could have helped the defence to develop an alternative account of the Japanese conduct. As Röling put it:

“Arguably, by these restrictions the accused were seriously hampered in their defence. But the important point was that the Tribunal, at least its majority, regarded those things as irrelevant. The facts were not unknown to them; but they just did not matter, if one believed that Allied misbehaviour should have no influence whatsoever on the evaluation of Japanese misbehaviour.”¹³⁵

Ultimately, Röling and Pal contended, the majority of the judges used the charter’s stipulation to prevent the defence from establishing facts that were politically inconvenient to the Allied powers and did not care that this impeded the defence’s capacity to function effectively.

A second kind of criticism which the three dissenting judges expressed about the majority’s procedures for drawing factual inferences concerned the majority’s interpretation of the evidence that actually was before them. On this matter, Bernard formulated a wholesale rebuttal of “[t]he manner in which deliberations were conducted.”¹³⁶ In terms of the procedures through which a trial ought to infer evidentiary and ultimate facts, “the guarantees which the law of nations grants [the defendants],” Bernard argued, foresaw “oral deliberations, outside of all influence, bearing upon all produced evidence, among all the judges who sat at the trials.”¹³⁷ Yet the court’s actual procedures for arriving at findings of fact fell short of this standard: “the eleven judges which compose the Tribunal were never called to meet to discuss

¹³⁴ Cassese, Röling, *The Tokyo Trial*, 54.

¹³⁵ *Ibid.*, 54f., cf. 60. See also Pal, “Judgment,” 646f; Kopelman, “Ideology and International Law,” 395.

¹³⁶ Bernard, “Judgment,” 494. Retrospectively, Röling concurred (cf. Cassese, Röling, *The Tokyo Trial*, 62f.).

¹³⁷ Cassese, Röling, *The Tokyo Trial*, 62.

orally a part of or in its entirety [the findings of fact].”¹³⁸ Instead, oral deliberations about the findings of fact were held between the members of the majority only. Once the majority had reached its conclusions, the rest of the judges were invited to comment upon these in writing.¹³⁹ Appalled by this in his view fundamentally flawed procedure, Bernard felt compelled to clarify that “[t]he placing of my signature at the bottom of the judgment” did not constitute an approval of the judgment itself, but “must be interpreted [only] as acknowledgment of the respect of customary forms of the deliberations of Tribunals.”¹⁴⁰

Röling and Pal raised further criticisms of the majority’s procedures for interpreting evidence. For instance, Röling believed that the majority had failed to contextually situate key documents relating to Japan’s foreign policy, and that it had therefore erroneously concluded that these documents constituted evidence of the ultimate fact of a conspiracy to war.¹⁴¹ Similarly, Pal had “a great deal of difficulty in accepting [documents] as evidence of what the prosecution sought to establish thereby,” namely the ultimate fact of Japan’s having waged an aggressive war.¹⁴² Notably, whereas Röling’s criticism allowed for the majority’s alleged misinterpretations to be the result of a kind of epistemic carelessness or negligence, Pal intimated that these were willful misreadings.¹⁴³

What Röling and Pal were unwilling to infer in these exemplary instances were ultimate facts which were not directly observable: the conspiracy to war, which in turn contributed to the war’s aggressive quality. In this regard, Bernard maintained that

¹³⁸ *Ibid.*

¹³⁹ *Ibid.* As Röling explained later, this particular practice of inference was the result of chance: When the judges originally decided to take a unanimous decision without allowing for dissent, they were still short of two members of court, one of whom was Pal. Yet “when [Pal] joined the court, he knew from the very start that he would not find anyone guilty of anything. Therefore he said, well, I’m not going to be bound by the decision of the other ten judges. And that was the reason why our agreement not to allow ‘dissenting opinions’ fell apart, because those of the judges who were not in agreement with the majority were now compelled to express themselves” (Cassese, Röling, *The Tokyo Trial*, 29; cf. Kopelman, “Ideology and International Law,” 419).

¹⁴⁰ Bernard, “Judgment,” 494f.

¹⁴¹ Cassese, Röling, *The Tokyo Trial*, 45.

¹⁴² Pal, “Judgment,” 636.

¹⁴³ *Ibid.*

“[n]o direct proof was furnished concerning the formation among individuals known, on a known date, at a specific point, of a plot the object of which was to assure to Japan the domination unaccepted by its inhabitants of some part of the world,”¹⁴⁴ and Pal argued that “[t]he factum of this alleged conspiracy, design or plan has not been attested to directly by any witness, thing, or document.”¹⁴⁵ Noting the prosecution’s assumption that “the quality of treachery rests in the minds of those making the attack,”¹⁴⁶ Pal also found it impossible “to infer,” on the basis of the available evidence, “[the defendants’] criminal mentality.”¹⁴⁷ Insofar as the concepts of conspiracy and aggression amounted to a “method of proof” for getting at the ultimate facts¹⁴⁸, that is, the three dissenting judges heavily criticized the majority’s usage of these concepts to establish the factuality of the acts to which they referred.¹⁴⁹

Regarding the *facta probanda* of a war of aggression and a conspiracy thereto¹⁵⁰, the three dissenting judges were united in their disagreement with the majority’s finding, yet reached very different conclusions of their own. Bernard argued that to arrive at its findings of fact, the majority had put words into the defendants’ mouths.¹⁵¹ Yet while he did not want to deny that “[t]he most abominable crimes were committed on the largest scale by the members of the Japanese police and army,” he eschewed having to pronounce findings of fact by claiming that he “could not venture further in the formulation of verdicts, the exactitude of which would be subject to caution.”¹⁵² Röling

¹⁴⁴ Bernard, “Judgment,” 495f.; cf. Sang, “Justice Bernard,” 99.

¹⁴⁵ Pal, “Judgment,” 937, cf. 659; cf. Minea, *Victor’s Justice*, 132f.

¹⁴⁶ Pal, “Judgment,” 626.

¹⁴⁷ *Ibid.*, 636.

¹⁴⁸ Pal, “Judgment,” 529, quoting the prosecution.

¹⁴⁹ Another concept referring to an unobservable act and to render this act a crime was that of “omission.” All three dissenting judges discussed the difficulties involved in inferring the crime of omission in great detail (e.g. Bernard, “Judgment,” 492f.; Röling, “Opinion,” 1062ff.). However, since this concept was not used to operationalize the crime against peace, I do not discuss it further.

¹⁵⁰ Originating from US domestic anti-trust law, the conspiracy charge had already undergone a number of complete overhauls in the run-up to and during the Nuremberg tribunals. Overall, while the charge had originally been introduced into the trial planning as a legal instrument for extending the reach of crimes against humanity, it ended up having the exact opposite effect of delimiting the judicial reach of this crime (cf. Bloxham, *Genocide on Trial*, 19f., 69; Douglas, *Memory of Judgment*, 20, 44, 55f.; Sellars, ‘Crimes Against Peace’, 52, 70ff., 156).

¹⁵¹ Bernard, “Judgment,” 495.

¹⁵² *Ibid.*, 496.

noted a number of “issues, where a different interpretation should be given to the facts laid before the Tribunal,” but limited his reinterpretation of the majority’s inferences about the ultimate facts to instances in which such reinterpretation “might have direct bearing on the question of criminal liability.”¹⁵³ Pal, finally, completely disagreed with all the majority’s findings regarding the *facta probanda*.

With Bernard having opted out of the business of inferring ultimate facts, by which inferential procedures did Röling and Pal arrive at their respective conclusions? Röling steered a middle course: he resolved that the war had been aggressive and had resulted from a conspiracy thereto, yet that the extent of both of these ultimate facts – and therefore, the extent of the defendants’ criminal liability for them – was smaller than the majority professed to have shown.¹⁵⁴ To this end, Röling argued that the majority’s findings of fact were afflicted by conceptual imprecision and by a lack of insight into the actual occurrences of the evidentiary facts cited. On the one hand, against the prosecution’s intention in employing the concepts of aggression and conspiracy to cast the net widely¹⁵⁵, Röling contended that “[i]t is wellnigh impossible to define the concept of initiating or waging a war of aggression both accurately and comprehensively.”¹⁵⁶ For Röling, the fact of a defendant’s membership in a government which had conspired to wage aggressive war was “not sufficient” to conjecture this defendant’s actual participation in these matters; rather, such a conjecture necessitated evidence of the defendant’s aggressive and conspiratorial “intentions” in joining the government.¹⁵⁷ On the other hand, Röling found that weaknesses inherent in the evidentiary material hampered the drawing of inferences regarding both evidentiary and ultimate facts. For instance, because the defence had not been allowed to produce evidence of the “aggressive intentions on the part of other

¹⁵³ Röling, “Opinion,” 1065.

¹⁵⁴ Cf. Cryer, “Röling in Tokyo,” 1123.

¹⁵⁵ The metaphor of “casting the net widely” was used by the judges themselves (cf. Cassese, Röling, *The Tokyo Trial*, 58).

¹⁵⁶ Röling, “Opinion,” 1061.

¹⁵⁷ *Ibid.* In his interviews with Cassese, Röling also criticized the evidentiary shortcuts established by the conspiracy charge (Cassese, Röling, *The Tokyo Trial*, 58).

countries,” Röling argued that it was impossible to infer, as the majority had done, that Japan had had no objective reason to feel threatened and on the basis of this evidentiary fact to conclude that the war had been aggressive.¹⁵⁸ In addition, intra-governmental matters, such as the clashes between “aggressive” and “conservative” factions over whether or not Japan should go to war, were “difficult to grasp,” making it impossible to establish the intentions of all of the members of the Japanese government at all of the relevant points in time with the necessary certainty.¹⁵⁹ In sum, after reviewing the evidence before him, Röling generally agreed with the majority’s finding of a Japanese conspiracy to wage aggressive war. However, he not only disagreed with some of the details of these findings¹⁶⁰, but also found that the conceptual and evidentiary weaknesses of the majority’s process of inference “left sufficient room for doubt” about the defendants’ intentions.¹⁶¹ Using this room for doubt, Röling concluded that several of them had joined the Japanese government to not to participate in, but to prevent the deeds of which they were now accused.¹⁶²

In stark contrast to Röling’s bounded criticism, Pal’s dissent contained a wholesale rejection of all of the majority’s factual inferences. Pal disagreed that the war had been an act of aggression on the part of Japan, opined that “the whole story of the over-all conspiracy is a preposterous one,”¹⁶³ and found that the defendants “were perhaps wrong, and perhaps they misled themselves,” but that they were neither aggressors nor conspirators.¹⁶⁴ With regard to the ultimate fact of conspiracy, Pal argued that the majority’s standards for inferring this *factum probandum* were lacking in rigour.¹⁶⁵ Whereas the court had used a criterion of sufficient proximity to get from evidentiary to ultimate facts¹⁶⁶, a more suitable standard, Pal argued, would hold that “[t]he

¹⁵⁸ Röling, “Opinion,” 1073; cf. Kopelman, “Ideology and International Law,” 395.

¹⁵⁹ Röling, “Opinion,” 1078.

¹⁶⁰ Cf. Cryer, “Röling in Tokyo,” 1123.

¹⁶¹ Röling, “Opinion,” 1078.

¹⁶² Cf. Casesse, Röling, *The Tokyo Trial*, 58f.).

¹⁶³ Pal, “Judgment,” 940.

¹⁶⁴ *Ibid.*, 938.

¹⁶⁵ Cf. Kopelman, “Ideology and International Law,” 417; Minear, *Victor’s Justice*, 120f., 133.

¹⁶⁶ Pal, “Judgment,” 937.

evidentiary facts [...] must have such a bearing upon the principal fact as would make them inconsistent with any result other than the truth of the *factum probandum*”¹⁶⁷ – yet “the presented facts, by inference from which we are invited to conclude the enormous conspiracy, mostly admit of a plurality of causes.”¹⁶⁸ Underlying this argument was a different philosophy of history. In his discussion of the pitfalls of the majority’s procedures for inferring the ultimate fact of a conspiracy, Pal wrote:

“The total fabric of the historical development facing us at the present moment is indeed the result of the interweaving of very various strands; it will be a puerile oversimplification of the problem to start with only one single thread ignoring the complex and intimate involvement in the whole historical process of the various forces which contributed to the hopeless complexity of the present international life.”¹⁶⁹

Ultimately, then, Pal contended that the inferential procedures through which his colleagues tried to match the concept of conspiracy with observable facts so to arrive at the *factum probandum* relied on the assumption of a kind of causality that could not be found in “international life” as it actually existed.

With regard to aggression, Pal firstly noted both the absence of a generally agreed-upon definition and the majority’s suggestion that such a definition was unnecessary for them to draw inferences about the *factum probandum* of aggression. He rejected this view: since “[n]o term is more elastic or more susceptible of interested interpretation, whether by individuals, or by groups, than aggression,” a complete lack of definition was bound to seriously undermine any court’s fact-finding work.¹⁷⁰ Secondly, Pal also took note of the welter of definitions of aggression that had been proposed by legal scholars as well as by the League of Nations. Proving the ultimate fact of aggression according to these definitions, Pal argued, would necessitate analyses that were exceedingly difficult to undertake, whether because “[h]undreds of thousands of events may have to be examined” or because relevant events were “likely to [have

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*, 659; cf. 937.

¹⁶⁹ Pal cited in Kopelman, “Ideology and International Law,” 417.

¹⁷⁰ Pal, “Judgment,” 609.

been] witnessed only by excited or prejudiced observers.”¹⁷¹ Finally, Pal sought to refute the majority’s finding of fact with regards to aggression by pointing to a possible alternative explanation: the Japanese government’s decisions to begin different military campaigns, he argued, were actually undertaken in reaction to threatening events.¹⁷²

Knowledge practices, legal ways of knowing, and the judge as a subject of truth: how is knowledge political?

What to make of the three dissenting judges’ criticisms of their colleagues’ inferential procedures for determining the truth content of pieces of evidence and for getting from this evidence to evidentiary to ultimate facts? In this second half of the section, probing the empirical grip of a number of key concepts developed in earlier chapters – knowledge practices, ways of knowing, and subjects of knowledge – in the example of the Tokyo tribunal ultimately leads me to wonder what it means to speak about the political nature of knowledge.

To start with, what can be gleaned from the foregoing discussion about the court’s *knowledge practices*? While a first bundle of knowledge practices to look into would be those through which evidence is initially gathered or produced, the dissents by Bernard, Röling, and Pal do not provide much insight into these kinds of practices. In the main, the three judges’ dissents allow for conclusions about the second step of the process in which evidence is gathered, namely the introduction of evidence into the court proceedings. In this regard, what can be established from the three dissents is that the judges in Tokyo practically selected evidence according to various, not always intrinsically coherent or cumulatively consistent logics.

¹⁷¹ *Ibid.*

¹⁷² Cf. Kopelman, “Ideology and International Law,” 419. According to Pal, because “Japan was encircled, and its economy was restricted,” “America’s economic measures against Japan were therefore important in determining the character of any subsequent action by Japan” (cited *ibid.*, 420).

As for how evidence was then interpreted by the judges, the dissents criticized two kinds of practices in particular. On the one hand, Bernard and Pal objected that the court had arrived at its factual inferences not through oral deliberations conducted in chambers and between all of the judges, and that those of the judges on the bench who were not members of the majority had only been able to react in writing to the findings of fact already concluded by the majority. It was for this reason that Bernard, disapproving of the tribunal's actual findings, signed the judgment only to indicate his continuous respect for judiciary practices.

On the other hand, Röling and Pal criticized how the concepts of conspiracy and aggression had been used as "methods of proof" for arriving at findings about the ultimate facts; in consequence of this criticism, they themselves produced somewhat or altogether different findings of fact. To render the acts of aggression and conspiracy inferable, Röling developed operationalizations of the corresponding concepts that differed from those proposed by the majority. After sorting and weighing the evidence provided by the prosecution and the defence on the basis of these operationalizations, Röling concurred with the majority's general findings of a war of aggression and a conspiracy thereto, yet disagreed with many of the details of the majority's account. By contrast, Pal not only admonished the contested and unclear character of the concepts of aggression and conspiracy, but also demanded, in addition to the weighing of evidence, a further practice for drawing inferences about ultimate facts: the ruling out of alternative explanations for these *facta probanda*. Especially in light of Pal's underlying philosophy of history, this latter requirement was impossible to fulfill – leading Pal to disagree with all of the majority's and with Röling's findings of fact.

Overall, however, the analytical purchase of the concept of *epistemic practices* on the material provided by three dissents seems quite limited – all the more so in comparison to that of the concept of *ways of knowing*. This latter concept can be used to analyze the controversies surrounding the tribunal's inferential procedures in terms of the differences between two distinct legal traditions, the common and the civil law

tradition of criminal jurisdiction.¹⁷³ Referred to by Röling as “the Anglo-Saxon and the continental system,”¹⁷⁴ these two traditions constituted distinct ways of knowing. As Röling explained:

“The [Anglo-Saxon system] rests on two parties, the prosecutor and the accused, who offer evidence to prove their contentions, and the judge bases his judgment on what has been brought to his knowledge. [...] Moreover, the decision is often taken by a jury of laymen, who may easily be deceived by statements or documents. For that reason many rules have been adopted to protect the jury from misleading, untrustworthy evidence. [...]

Continental proceedings differ, in that they [...] entrust judicial magistrates, the *‘juges d’instruction’*, with an inquiry for that purpose. The whole procedure, before and during the trial, has more of an inquisitorial character in contrast to the accusatory character of the Anglo-Saxon system. On the continent the jury plays a less dominant role. [...] The judge may take into account anything he considers as having a probative value, anything which helps him arrive at the truth.”¹⁷⁵

The Tokyo tribunal, in fact, was a mix of these two systems. In line with the civil law tradition, the tribunal’s judges – there was no jury – were not bound by any technical rules of evidence; yet in line with the common law tradition, the tribunal’s procedural logic was an accusatorial one and the judges, in order to decide about the admission of evidence, frequently resorted to the kind of technical rules they were in fact not bound by. Consequently, Pal, coming from the Anglo-Saxon system, attacked the tribunal’s inferential procedures for being too closely modelled on the continental system, whereas Bernard and Röling, coming from the continental system, criticized the tribunal for too closely following the Anglo-Saxon system.¹⁷⁶

Grasping the continental and the Anglo-Saxon tradition as distinct legal ways of knowing also sheds light on the dissenting judges’ diverging epistemological ideals.

¹⁷³ For further pointers on the dissenting judges’ respective legal philosophies, cf. Cryer, “Röling in Tokyo”; Kopelman, “Ideology and International Law”; Sang, “Justice Bernard.”

¹⁷⁴ Cassese, Röling, *The Tokyo Trial*, 50.

¹⁷⁵ *Ibid.*, 50f.

¹⁷⁶ Cf. *ibid.*

Röling's and Bernard's epistemological ideal was centered on the person of the judge, for whom epistemological principles were at the same time ethical ones. "Personally, being accustomed to the continental system," Röling wrote, "I am a bit critical of many technical rules of evidence."¹⁷⁷ Instead, Röling stressed the importance of a judge's impartiality, a quality which he claimed to embody himself: relating the story of a conflict between himself and his government over his dissent, Röling explained that "I was accustomed to working as an independent judge, guided only by the law, without any interference from outside" and that "I felt it was impossible to participate in a judgment that ran counter to my own well-considered opinion."¹⁷⁸

By contrast, Pal, who was steeped in the common law tradition, emphasized that factual truth had to rest on direct observation and on the minimization of "infirmities" in one's inferential practices.¹⁷⁹ While it was "[t]he mark of the witness" to have "knowledge resting on his own observations" and to "speak de visu suo et audio,"¹⁸⁰ the role of the judges on the bench was "to form their own conclusions or opinion on the facts stated" before them.¹⁸¹ As regards "infirmities" in a tribunal's inferences, Pal acknowledged that it was impossible to fully eliminate these¹⁸², but demanded that a trial ought to achieve for its findings of fact a "degree of such probability [...] as to justify one in regarding it as certainty."¹⁸³ However, insofar as "probability belongs wholly to the mind,"¹⁸⁴ two problematic tendencies of the mind could obstruct the minimization of infirmities: there was the "suspicion" with which judges might already enter the trial¹⁸⁵, and there was "the pleasure which [the mind] is apt to take

¹⁷⁷ *Ibid.*, 51.

¹⁷⁸ Cassese, Röling, *The Tokyo Trial*, 61.

¹⁷⁹ For an example of these requirements, cf. Pal's objection to using one of the defendant's diaries as a piece of evidence (Pal, "Judgment," 635).

¹⁸⁰ *Ibid.*, 630.

¹⁸¹ *Ibid.*, 637.

¹⁸² *Ibid.*, 937.

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*, 659.

¹⁸⁵ "We must not start with a pre-occupied mind" (Pal, "Judgment," 937). Given that Röling, for example, was convinced that Pal arrived to Tokyo with the firm intention of exonerating all of the defendants for all of the charges (Cassese, Röling, *The Tokyo Trial*, 29), this statement is ironic, to say the least.

in readily adapting circumstances to one another and even in straining them a little, if need be, to force them to form parts of one connected whole.”¹⁸⁶ In light of these, the rationale for detailed technical rules of evidence was that they would keep in check these tendencies and the “erroneous persuasion” likely to be caused by them.

Summing up the differences between the two legal traditions’ epistemological ideals, Röling remarked that “[t]he purpose and the result of [an Anglo-Saxon/common law] trial is not the real truth, but the trial-truth. Continental proceedings differ, in that they aim to discover the real truth.”¹⁸⁷ Of course, this was an oversimplification and a polemic. What Röling meant was that a criminal trial in the common law tradition began and ended with versions of the truth – the prosecution’s and the defence’s versions, and the judges’ or jury’s decision for either version so that a judgment about an act and its criminality could be rendered. By contrast, a criminal trial in the civil law tradition revolved around the judges’ effort to reconstruct a full account of events upon which to base their judgement. To capture these differences between the two legal traditions, the concept of *ways of knowing* seems a good alternative to the rather tendentious notions of “trial-truth” and “real truth.”

To conclude my discussion of the Tokyo tribunal’s epistemological aspects, I would like to pose one further question: How was the tribunal’s knowledge political? The secondary literature has overwhelmingly located the political aspect of the tribunal’s knowledge in the different political purposes it was made to serve. While this is an important point, I want to suggest that knowledge’s political nature also lies in how it is arrived at or produced – and that the concept of *subjects of knowledge* can help to analytically illuminate the thus located political aspect of knowledge.

In the secondary literature on the Tokyo trial, the political nature of knowledge has been considered in three ways in particular. First, with regard to the tribunal as an instance of victor’s justice, the literature has discussed the knowledge which the

¹⁸⁶ Pal, “Judgment,” 659.

¹⁸⁷ Cassese, Röling, *The Tokyo Trial*, 50.

tribunal produced as a victor's version of the Pacific War, i.e. an account of the war which plastered over the atrocities committed by the Allied powers and avoided looking into these powers' role in the onset of the war.¹⁸⁸ Secondly, the secondary literature has highlighted the political motivations driving Pal's account of the war. In this regard, Kopelman maintains that Pal was "blinded [...] to the militaristic and imperialistic nature of Japanese expansionism,"¹⁸⁹ and Cryer contends that Pal uncritically relied on the "stated Japanese intentions to liberating Asia."¹⁹⁰ Pal's resolve to denounce the violence of Western imperialism, these authors argue, caused him to willfully ignore the violence of Japan's imperialism. Thirdly, the secondary literature has discussed the political nature of the knowledge produced by the Tokyo tribunal in terms of its didactic effects on Japanese society. In this context, both the majority's and Pal's respective partialities have been cited as obstructing this knowledge from achieving the (re-)educational results it was intended to achieve. On the one hand, it has been argued that in the early postwar period, the Japanese public perceived the partiality of the majority judgment and therefore did not feel obliged to incorporate this judgment in its developing narratives of the war, leading to a "collective amnesia."¹⁹¹ On the other hand, from the early postwar years until the present day, revisionist and militarist Japanese historians and politicians have regularly drawn on Pal's dissent.¹⁹²

While these are certainly relevant points, they are indicative of a narrow understanding of knowledge's political nature which, by taking knowledge as information, assumes for knowledge to be political insofar as it is made to serve political purposes. Much in this vein, the existing secondary literature has highlighted how the Tokyo tribunal's varying findings of fact have furthered likewise varying political agendas. However, this preoccupation with the informational content of the

¹⁸⁸ E.g. Kopelman, "Ideology and International Law," 392.

¹⁸⁹ *Ibid.*, 420.

¹⁹⁰ Cryer, "Röling in Toyko," 1124.

¹⁹¹ Totani, *Tokyo War Crimes Trial*, 255.

¹⁹² Takeshi, "The Tokyo Tribunal."

knowledge produced by the Tokyo trial has led the literature to almost entirely disregard the political character of the process of knowledge production. To remedy this limitation and to widen the question of how knowledge about war is political, I propose to undertake two further steps. First, I suggest to relocate the question to look at how the different inferential procedures, knowledge practices, and legal ways of knowing at play in Tokyo tribunal lend themselves to the advancement of different political agendas. Secondly, I reconfigure the question to ask how these legal ways of knowing and the theories of truth that came with them presumed and produced the judge as a certain kind of knowledgeable subject.

As to the first of these two ways of knowledge's being political in Tokyo, on the one hand, Röling and Bernard, the two dissenting judges coming from the civil law tradition, denounced how the common law aspects of the trial's proceedings were used to advance the Allied powers' political aims. Bernard complained that while "the Charter permitted granting to the Accused guarantees sufficient for their defense, I think that actually these were not granted to them."¹⁹³ Similarly, Röling highlighted that according to the logic of a common law trial, the prosecution was "a party in a conflict" acting not "in the interest of [a] community," but in self-interest. (The other party to this conflict, of course, was the defence.) In this constellation, a trial could "only work effectively if there is a certain 'equality of arms' between the parties," yet

"[t]hat was not the case in the post-war trials. The prosecution was in possession of the documents. It had the manpower and the means to prepare its case. The defendants were in a clearly inferior position and in such a case the Anglo-Saxon system provides only a veneer of fairness, not true fairness."¹⁹⁴

In sum, Röling and Bernard criticized how the tribunal instrumentalized certain elements of the common law approach to criminal jurisdiction in order to further, as

¹⁹³ Bernard, "Judgment," 494; cf. Casese, Röling, *The Tokyo Trial*, 52; Sang, "Justice Bernard," 100).

¹⁹⁴ Casese, Röling, *The Tokyo Trial*, 52.

Röling put it, the Allied powers' "political motives."¹⁹⁵

On the other hand, Pal's dissent frequently pointed to how the main civil law component of the tribunal – the stipulation that the judges did not have to take into account technical rules of evidence – was made to serve the Allied powers' purposes.¹⁹⁶ As Pal explained: "A trial conducted on this basis may be sufficiently unrevealing so as to shut out the essential facts responsible for the world trouble and may, at the same time, afford ample opportunity for a collective expression of retributive and aggressive sentiment."¹⁹⁷ The tribunal, Pal argued, instrumentalized its civil law-inspired rules of evidence to bolster the Allied powers' international position and to prevent inquiry into their conduct of the war as well as into, by extension, the larger historical context in which imperial wars were embedded. Notwithstanding his disagreement with the more radical aspects of Pal's argument, and in spite of his general "preference for the continental system," Röling also highlighted that this system allowed for political instrumentalization just like the Anglo-Saxon system: "it only works as long as judges are impartial and so long as a country has a decent, honest government."¹⁹⁸ Arguably, neither thing could be said of the Tokyo tribunal and the international context in which it operated. Taken together, Bernard, Röling, and Pal's dissents can thus serve to push the question of how knowledge is political beyond the confines in which the secondary literature on the Tokyo tribunal has so far considered it. They show that not only the tribunal's findings of fact were used to further political purposes, but that the means by which the tribunal arrived at these findings of fact were similarly instrumentalized.

And yet, this push still leaves intact the terms in which the question is posed – and

¹⁹⁵ "By the way, on this point Nuremberg and Tokyo had something in common. In both cases a trial was held partly for political motives. In Nuremberg Jackson wanted to vindicate the American deviations from, if not actual violations of, the laws of neutrality. In Tokyo MacArthur wanted to avenge the attack on Pearl Harbor, and in doing so, to take the blame off the American government and the American military commanders. So at the roots of both trials you can find reasons that had no relation whatsoever with the idea that starting an aggressive war is an international crime for which individuals may be punished" (*ibid.*, 81).

¹⁹⁶ Cf. Pal, "Judgment," 612.

¹⁹⁷ *Ibid.* Furthermore, "such an enquiry may only entertain; it would hardly educate. It would contribute little to a comprehension of the causes of war or the conditions of peace" (*ibid.*).

¹⁹⁸ Cassese, Röling, *The Tokyo Trial*, 52.

which, for a Foucault-inspired genealogy, are inadequate for grasping knowledge's political nature. Implicitly, the secondary literature on the Tokyo tribunal seems to assume not only that knowledge is political insofar as it is instrumental to the realization of political purposes, but also that true knowledge is that which is not instrumentalized.¹⁹⁹ For Foucault, however, knowledge was always and inevitably political. Hence, the "political question" of truth was not its instrumentalization by political actors or its emancipation therefrom, but how régimes of knowledge were "linked in a circular relation with systems of power."²⁰⁰ Therefore, to engage the Tokyo tribunal as an example of the problematization of war in international politics, it seems necessary to alter the terms in which the question of the political nature of the tribunal's knowledge has been posed. While a single example obviously cannot provide a full view of the entanglement of régimes of knowledge and power, what it can do is to provide some empirical material for making a stab at this entanglement. Therefore, I want to conclude this section by returning to another concept developed in previous chapters to look at how the tribunal's work presupposed and (re-)produced subjects of knowledge.

In the primary sources under study here, several different subjects of knowledge – among them the witness, the expert, and the accused/criminal – make an appearance, but there is one particularly prominent subject of knowledge: the judge. A first way in which the judge as a subject of knowledge features in the three dissents is via the different legal ways of knowing from which the dissenting judges hailed. In the common law tradition, as Pal wrote, the judges' and the jury's task was "to form their own conclusions [...] on the facts stated" on the basis of their "range of common

¹⁹⁹ A case in point is Cryer's appraisal of Röling's epistemological approach: "Röling, transcending the time in which he wrote, sought to give a truly objective account of what occurred, and took due account of both prosecution and defence evidence, something neither the Majority nor Pal could perhaps say" (Cryer, "Röling in Tokyo," 1122).

²⁰⁰ Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*. Edited by Colin Gordon, Translated by Colin Gordon, Leo Marshall, John Mepham, Kate Soper (New York, NY: Pantheon Books, 1980), at 133. "It's not a matter of emancipating truth from every system of power [...] but of detaching the power of truth from the forms of hegemony [...] within which it operates."

experience or common knowledge.”²⁰¹ That the ruling was usually taken by a jury of laypeople was another reason why there were such strict rules of evidence. For these reasons, as Röling explained, “in the Anglo-Saxon system, the judge is passive. He just weighs what the parties bring before him. He leaves it to the parties to bring facts before the Court and only interferes when it is necessary for the maintenance of the rules of procedure.”²⁰² In the civil law tradition, by contrast, the jury “plays a less dominant role” as the “continental procedure [...] gives the judge an active role whereby he takes initiatives to discover the truth.”²⁰³ Because “the judge is a legal expert with great experience, there is scarcely any need for technical rules of evidence,” implying that “[t]he judge may take into account anything he considers as having a probative value, anything which helps him arrive at the truth.”²⁰⁴ As ways of knowing, both legal traditions hence assumed for the judge to have a specific kind of expertise and therefore to be a particularly capable subject of knowledge. Yet while in the Anglo-Saxon tradition, the judge’s unique epistemological capability was the enforcement of the inferential process, in the continental tradition, the judge’s distinct capability was the determination of truth itself.

A second way in which Pal and Röling’s dissents assumed the judge as a particular subject of knowledge was in terms of their respective theories of truth. Pal seems to have ascribed to a correspondence theory of truth. Not only was he convinced that “[b]elief, no doubt, is purely mental,” but he also urged that “we must remember that our belief [about the occurrence of a fact] would approximate a correct representation of the actual fact only if the data for that fact have fully entered into the mental formation of that belief.”²⁰⁵ I.e., Pal assumed for beliefs to be fully mental and facts or truth to be fully of this world. Because of his presupposition that the mind tended to misrepresent the facts, the problem he worried about was how to make sure that the

²⁰¹ Pal, “Judgment,” 637.

²⁰² Cassese, Röling, *The Tokyo Trial*, 50.

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*, 51.

²⁰⁵ Pal, “Judgment,” 659.

mind's beliefs corresponded the actual facts – hence his insistence on technical rules of evidence. Ultimately, for Pal, judges were no different from human beings more generally: albeit capacitated by their expertise, they were deficient subjects of knowledge.

By contrast, Rölöng adhered to a coherence theory of truth according to which a judge “should consider [a piece of evidence] in relation to all the other evidence.”²⁰⁶ According to coherence theories of truth, truth is not a property of the world, but is – partly or fully – subjective, or a property of the mind. What is more, insofar as it is subjective, truth can be understood as the product of the subject's historical and political context and position.²⁰⁷ If truth was a property not of individual pieces of evidence but of the system into which these pieces were arranged, it was ultimately the judge who produced truth, and judges' prior experiences made them both specifically capable and specifically positioned subjects of knowledge.

I do not mean to conclude, on the basis of only a handful of citations, that Pal really adhered to a correspondence theory of truth and that Rölöng really followed a coherence theory of truth. Rather, the point to take away from this analysis of the theories of truth which the judges possibly held is that when we wonder what different theories of truth assume about the subjects of knowledge they imply, methodology – in the sense of a process of reflecting on our ways of knowing (see Chapter 2) – becomes political in a new way. The question is no longer one of knowledge's instrumentalization. Rather, it is about the positioning that capacitates us as subjects of knowledge: Are we epistemologically capable insofar as we are split from the

²⁰⁶ Cassese, Rölöng, *The Tokyo Trial*, 53. Rölöng also established the truth content of other pieces of evidence in this way: “When the trial sessions were over, I put all these government decisions in chronological order, and you could clearly see from them how the standpoints had gradually hardened, how step-by-step the war came closer and closer. I remember that one document did not fit at all into this development from peace to war. I sent the document to the Translation Office [...] and when it came back, it was apparent that previously it had been wrongly translated. The correct translation, made by the official Translation Office, fitted perfectly into its chronological context” (*ibid.*).

²⁰⁷ On coherence theories of truth generally as well as on Foucault's notion of truth/power as a coherence theory of truth, cf. Linda Martín Alcoff, “The Case for Coherence,” in Michael P. Lynch (ed.), *The Nature of Truth: Contemporary Perspectives* (Cambridge, MA: The MIT Press, 2001), 159-182.

objects of our knowledge, insofar as we stand in relation to them, or insofar as we find ourselves to be part of the problems we seek to know about?

With this question, the section has come full circle. In the section's first part, I inquired into contestations surrounding the Tokyo tribunal's procedures of inference for getting from evidence to evidentiary facts and from evidentiary facts to the *facta probanda* of aggressive war and conspiracy. On the basis of this inquiry, in the second part of the section I probed the analytical usefulness of a number of concepts developed in earlier chapters for making sense of these contestations. While the concept of *knowledge practices* had relatively little analytical purchase, the concept of *ways of knowing* illuminated how Bernard, Röling, and Pal's disagreements with the majority's procedures of inference stemmed from the respective legal traditions from which the dissenting judges originally hailed. Finally, the concept of the *subject of knowledge* was perhaps the most useful in terms of the genealogical aims of my thesis, for it allowed me to reformulate the question of knowledge's political nature. While the secondary literature on the Tokyo tribunal has by and large posed this question in terms of the instrumentalization of knowledge-as-information for political purposes, thinking about the judge as a knowledgeable subject let me rework the question into one about how subjects of knowledge are capacitated because of or in spite of their positioning in relation to the objects of their knowledge.

What, then, of this object of the Tokyo tribunal's knowledge – how did the tribunal formulate war as a problem and thereby produce it as an object of political action? This is what I attend to in the third and final section.

The problems of war and war-time violence at the IMTFE

After the previous two sections' explorations of criminalization as a means for problematizing war and of the criminal trial as a site at which knowledge about this problem is produced, my aim in this section is to analyze the three dissenting judges' various and contested formulations of the problem of war itself. To clarify, I am not

concerned here with the question of how exactly to judge the Pacific War historiographically or legally.²⁰⁸ Rather, my purpose is to explore some of the Tokyo tribunal's assumptions about war as a phenomenon in and an object of international politics – and as a problematic one at that. To do so, I again put to use some of the analytical concepts and categories developed in previous chapters. Specifically, I look for formulations of war as a legal, an economic, and a social problem as well as for assumptions about warfare as a rational and “civilized” undertaking.

War as a legal, social, and economic problem

Apropos war as a legal problem, Bernard, Röling, and Pal's dissents yield insights into contestations about three aspects in particular. First, they touch upon the question of responsibility for the problem of war. The majority judgment made war into a problem for which individuals, not states, bore (criminal) responsibility. Referred to by the secondary literature as the Tokyo majority's most “radical” move²⁰⁹, it was also one of its most controversial ones. Indeed, while generally agreeing with the idea that the problem of war was one for which individuals bore responsibility, both Röling and Bernard disagreed with certain aspects of the majority's conception of responsibility. Röling, for one, deprecated how the majority intertwined the notion of individual responsibility for war with the concept of conspiracy. Basically, the concept of conspiracy implied that “if you were involved, you were responsible for everything”²¹⁰

²⁰⁸ For a helpful overview of the prosecution's, the defense's and the judges' narratives of the war, cf. Totani, *Tokyo War Crimes Trial*, ch. 4. In the historiography of the Pacific War, one strand of debate – often pursued on the initiative of revisionist historians falling on the far right end of the political spectrum in Japan – concerns the question of how to historically delimit the Pacific War (U. Kei, “Pal's ‘Dissentient Judgment’ reconsidered: Some notes on postwar Japan's responses to the opinion,” *Japan Review* 19 (2007), 215–224). The debate reaches back to the Tokyo tribunal itself, at which one major disagreement concerned the question how far back in time the tribunal's inquiry and jurisdiction should reach. While the prosecution's narrative saw various instances of aggressive war starting with the so-called Mukhdén Incident of 1931, the defense's line of argument sought to cast these alleged cases of crimes against peace either as isolated occurrences or as attempts at self-defense by force. The majority judgment, Bernard, and Röling by and large confirmed the prosecution's narrative; Pal, by contrast, sided with the defense's framing of the war (cf. Pal, “Judgment,” 953).

²⁰⁹ Sellars, ‘*Crimes Against Peace*’, 85.

²¹⁰ Cassese, Röling, *The Tokyo Trial*, 58.

– an idea that Röling strictly rejected. Calling the conspiracy charge “one of the ugly aspects of the Anglo-Saxon criminal system,” Röling was of the view that “your responsibility is restricted to what you have intentionally achieved.”²¹¹ For an individual to be considered co-responsible for the war, membership in the Japanese government alone did not suffice: “To have influence over government decisions one needs to occupy a position of power. If one does accept such a position with good intentions, one should not be blamed, but praised. Even if in the event one’s endeavours fail.”²¹²

Bernard, by contrast, had no specific contentions about the conspiracy charge’s conception of responsibility, generally agreed with the majority that individuals could be held responsible for aggressive war, and, as mentioned before, also assumed that finding individuals responsible for war did not subtract from the responsibility of states. However, he disagreed with the majority’s conception of responsibility for war-time atrocities. To enlarge the scope of criminal responsibility for war crimes, the Tokyo majority used the concept of “negative criminality” to render criminal high-ranking military and political officials’ failure to prevent the commission of atrocities by normal rank and file soldiers. Against this, Bernard argued that in comparison to actual atrocities, any omission by higher-ranking officials to undertake possibly preventative measures did not constitute “a crime of equal seriousness”: he found that “the responsibility involved [in a crime of omission] is of an entirely different nature from that of the immediate author” and that the majority judgment had not specified this very different kind of responsibility.²¹³

A second contentious aspect of war as a legal problem which comes to the fore in the Tokyo tribunal’s dissents concerns the criminalization of aggressive war as a “return”

²¹¹ *Ibid.*

²¹² *Ibid.*, 58f.

²¹³ Bernard, “Judgment,” 492. Röling agreed with Bernard: “No government or commander will be able to prevent all war crimes. There is criminal responsibility only where all possible steps to prevent war crimes have not been taken” (Röling, “Opinion,” 1064).

of just war thinking.²¹⁴ As Kopelman has pointed out, already since the end of the First World War, there had been a revival of “the tradition of folding the *jus in bello* into the *jus ad bellum*,”²¹⁵ or of making the incidence of war crimes in an army’s war-time conduct depend not on the occurrence of atrocities, but on whether the army had fought a just or an unjust war. In this context, the Nuremberg and Tokyo tribunals saw a more explicit reemergence of the legal distinction between aggressive wars and wars of self-defense.²¹⁶ As alluded to in the previous sections, in their various moves for rendering aggressive war criminal, the majority of the judges in Tokyo left the term “aggression” itself undefined.²¹⁷ The legal and political difficulties implied in the definition of aggression had already led to considerable controversies amongst the Allied representatives gathered at the London Conference.²¹⁸ The majority of the judges in Tokyo, rather than coming up with a definition of their own, followed Keenan’s aforecited definition of aggression without much ado about its validity and scope.

While Bernard and Röling seem to have had little problem with the resulting lack of definitorial clarity²¹⁹, Pal issued a far-reaching critique of this definitional deficiency. First off, Pal contended that the definition of aggression was no simple matter: unlike what some of his colleagues had argued, “in international life as at present organized it is not possible ‘by the simple aid of popular knowledge’ to find out which category of

²¹⁴ Kopelman, “Ideology and International Law,” 396ff.

²¹⁵ *Ibid.*, 399.

²¹⁶ Or as Robert H. Jackson, the US Chief Prosecutor in Nuremberg, put it, “the reestablishment of the principle that there are just and unjust wars and that unjust wars are illegal” (quoted in Kopelman, “Ideology and International Law,” 396).

²¹⁷ Cf. Kopelman, “Ideology and International Law,” 392. Indeed, although “the idea of outlawing aggressive war” had been developing since roughly “the turn of the twentieth century,” it was only in 1974 that UN General Assembly Resolution 3314 defined the term “aggression” (Totani, *Tokyo War Crimes Trial*, 78ff.).

²¹⁸ While some struggled to locate a valid basis for a definition within existing international law, others found it impossible to define aggression in a way “that would include Hitler’s invasion of Poland in 1939, but would exclude Stalin’s invasions against the territories of bordering states.” Unsurprisingly, then, the Soviet representatives in particular were happy to argue that “people know what they mean when speaking of aggression” and thereby to justify leaving the term “aggression” undefined (Kopelmann, “Ideology and International Law,” 392f.).

²¹⁹ Cf. Röling, “Opinion,” 1061.

war is to be condemned as aggressive.”²²⁰ Instead, it needed “a clear agreement of the different nations as to the measures which they would deem to be aggressive.”²²¹ Thereupon, Pal emphasized the inexistence of such an internationally agreed-upon definition of aggression to underscore that the contemporary international order which his colleagues on the bench sought to preserve and further had been established through colonial conquests and subordination, i.e. through aggressive wars. After pointing out that “any interest which the Western powers may now have in the territories in the Eastern Hemisphere was acquired mostly through armed violence,”²²² Pal stressed that “none of these wars perhaps would stand the test of being a ‘just war.’”²²³ In light of this, Pal found the other judges’ application of just war principles to the Japanese case not only grossly erroneous, but also self-righteous. A suitable definition of aggression, Pal declared, was one which gave aggressive war “its true place in the scheme of knowledge showing its origin and connection with other cognate facts,”²²⁴ and which thereby disenabled the selective ignorance with which the Western powers looked at their own histories of aggression.

A third aspect of war as a legal problem into which the primary sources under study provide insight are differing assumptions about the nature of war’s wrongness (as distinct from assumptions about the nature of war). Famously, the judgment of the Nuremberg trial had declared aggressive war to be “essentially an evil thing”: “To initiate a war of aggression [...] is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole.”²²⁵ In a similar vein, Keenan had opened the Tokyo trial by claiming that it sought to address “the scourge of aggressive war.”²²⁶ However, a closer look at the Tokyo

²²⁰ Pal, “Judgment,” 607.

²²¹ *Ibid.*

²²² *Ibid.*, 551.

²²³ *Ibid.*

²²⁴ *Ibid.*, 609.

²²⁵ Quoted in Sellars, ‘*Crimes Against Peace*,’ 165.

²²⁶ Joseph Keenan quoted in Kopelman, “Ideology and International Law,” 383.

tribunal's different approaches and objections to the criminalization of war actually finds divergent ideas about the nature of war's wrongness.

First off, the Tokyo majority judgment's combinatory approach for criminalizing aggressive war carried with it different assumptions about the nature of war's wrongness. In legal theory, different kinds of crimes implied different kinds of wrongs: whereas personal, property, and inchoate crimes were *mala in se*, i.e. inherently wrong or evil, the category of statutory crimes comprised acts that were *mala prohibita*, or wrong insofar as society had decided for these acts to be unwanted and had legally codified this decision.²²⁷ Hence, in the majority's combinatory approach to criminalization, aggressive war was both a *malum in se* and a *malum prohibitum*. On the one hand, as the object of a criminal conspiracy and as a trigger for other crimes, aggressive war was an inchoate crime, its wrongness inherent in its nature. On the other hand, the majority judgment also criminalized aggressive war insofar as it constituted a breach of international treaties and amounted to a statutory crime whose wrongness was a human-ascribed trait.

None of the three dissenting judges fully agreed with this dual characterization of war's wrongness. Bernard's natural law perspective entailed a conception of aggressive war as naturally and necessarily evil but could not accommodate any stance in which war's wrongness was based on human decision. Röling, by contrast, strongly disagreed with Keenan when the latter "spoke of the crime against peace as 'the vilest,'"²²⁸ and more generally objected to any view of aggressive war as evil by nature. Comparing the crime against peace with war crimes and crimes against

²²⁷ Black's Law Dictionary defines a *malum in se* as "[a] wrong in itself; an act or case involving illegality from the very nature of the transaction, upon principles of natural, moral, and public law. [...] An act is said to be *malum in se* when it is inherently and essentially evil, that is, immoral in its nature and injurious in its consequences, without any regard to the fact of its being noticed or punished by the law or the state." Meanwhile, it gives a *malum prohibitum* to be "[a] wrong prohibited; a thing which is wrong because prohibited; an act which is not inherently immoral, but becomes so because its commission is expressly forbidden by positive law; an act involving an illegality resulting from positive law" (Henry Campbell Black, *Black's Law Dictionary*, 3rd ed. (St. Paul, MN: West Publishing, 1933), at 1150.

²²⁸ Röling, "Opinion," 1048.

humanity, Röling noted a “difference in character” distinguishing the crime against peace from the other two kinds of crimes tried in Tokyo: it was not a “vile act, violating the law in such a way that punishment has to be inflicted so as to maintain legal order.”²²⁹ Instead, Röling propagated that aggressive war was a wrong exclusively insofar as humans decided to make it so and that the purpose of punishment for this wrong was solely to prevent the individual perpetrator from future crimes. In fact, it was this reasoned rejection of an understanding of war as *malum in se* which made it necessary for Röling to find an alternative to the majority’s approach to the criminalization of aggressive war – which, as I have discussed in the first section, led to his construction of war as a “political” crime.

Like Röling, Pal rejected the view of war as evil by nature, mocking it as a “simple belief in a valiant god,”²³⁰ yet he did so for entirely different reasons. According to Pal, war’s wrongness was neither a natural or otherwise innate evil nor a result of collective human decision-making. Rather, while in the abstract war was a neutral instrument of statecraft, “an act of national sovereignty for the purpose of changing existing rights *independently of the objective merits of the attempted change*,”²³¹ in its historical actuality, war was clearly a wrong. On the one hand, war’s principally neutral character meant that in the contemporary international in which “there is no provision anywhere in the system for any peaceful adjustment without struggle,”²³² war could also be “a legitimate instrument of self-help against an international wrong.”²³³ On the other hand, since the “politico-historical evolution of mankind” – Pal carefully avoided the term progress – “has been accomplished chiefly through war,”²³⁴ war’s historical actuality translated into a potentiality: as war had historically been the most effective

²²⁹ *Ibid.*

²³⁰ The nations to whom “the present age is faced with not only the menace of totalitarianism but also the actual plague of imperialism,” Pal wrote, were “not yet [...] in a position to entertain a simple belief in a valiant god struggling to establish a real democratic order in the Universe” (Pal, “Judgment,” 611).

²³¹ *Ibid.*, 604, my emphasis.

²³² *Ibid.*

²³³ *Ibid.*

²³⁴ *Ibid.*, 611, cf. Minear, *Victor’s Justice*, 60.

means for changing the international, “the method of self-help by force” now constituted the most effective means of “self-defense or self-preservation”²³⁵ for the “dominated nations of the present day.”²³⁶ Taken together, precisely because aggressive war had long been the preferred instrument of Western powers for subjugating peoples and forming the international according to their interests, it could and should now fall to the “dominated nations” to seize this instrument for their purposes.

While Pal thus argued vehemently against his colleagues’ formulations of war as a legal problem, he did conceive of war as problematic in other ways. Notably, Pal theorized war as a social problem. Citing William Hesselstine, a US-American pacifist, historian, and member of the socialist party²³⁷, Pal contended that “an inevitable concomitant of armed warfare” was a profound sense of hatred between individuals on the war’s different sides – i.e., that war produced an “enmity [which] finds its natural expression not only on the battlefield in the heat of conflict but also in the lives of the soldiers and the sentiment of the community from which they come.”²³⁸ In a long passage of Hesselstine’s writing on the US-American Civil War which Pal quoted verbatim, war was stipulated to produce such enmity through two kinds of processes. On the one hand, hatred and enmity were “the natural result of the upheaval of the social order which the war produced.”²³⁹ On the other hand, however, they also resulted from the extreme nature of combat situations:

“The attachment to an ideal, a cause, or a country, *when such attachment calls for the sacrifice of security and life*, blinds the person feeling that attachment to whatever of virtue there may be in the opposing ideal, cause, or country. Seemingly, it becomes necessary for the supporters of one cause [...] to hate the supporters of the enemy cause

²³⁵ Pal, “Judgment,” 558f. Elsewhere, Pal speaks of war as a “method of self-help by force” (*ibid.*, 611).

²³⁶ *Ibid.*

²³⁷ Cf. Frank Freidel, “The Teacher and His Students,” *Wisconsin Magazine of History* 66, no. 2 (1982-1983), at 114; George Mosse, *Confronting History: A Memoir* (Madison, WI: University of Wisconsin Press, 2000), at 153.

²³⁸ Pal, “Judgment,” 964f.

²³⁹ *Ibid.*, 965.

with a venom which counter-balances their devotion to their own. [...] The enemy becomes a thing to be hated; he does not share the common virtues, and his peculiarities of speech, race, or culture become significant as points of difference or, better, sins of the greater magnitude.”²⁴⁰

In this argumentation, it was not enmity that led to war, but war which produced enmity. The disturbance of the social order which war induced and the existential threat which war-time violence constituted for its participants rendered previously neutral, not morally connoted markers of difference (“peculiarities”) into violations of morality (“sins”) and, in effect, led to the de-humanization of enemy combatants, making them “thing[s] to be hated.” Pal did not explicitly link the passage by Hesseltine to his overall argument about the role of war in the establishment and maintenance of a colonial international order, but the connection can be inferred: as Western powers used military force to construct colonial empires, the people they subjugated became immoral and non-human objects to them.

Röling also took war to be socially problematic, yet did so in a rather different inflection. Initially, Röling seems to have assumed that war, since it inevitably produced enmity, was socially problematic by nature. Röling’s expectations about the situation he would encounter in Japan were not derived from scholarly works such as Hesseltine’s, however. Rather, they were shaped by his personal experiences of the German occupation of the Netherlands. In his retrospective interviews, Röling recounted that “we resented the Germans very much, and [...] refused to have any contact with them,”²⁴¹ and that “[w]hen I came to Japan, I felt, well, we are now the occupying power and we will be treated in the same way.”²⁴² However, he soon noticed that “[t]here was a very different attitude towards war and victory there [in Japan] from the one I was used to.”²⁴³ When he told two new Japanese acquaintances “of my attitude in Holland to the occupying power and asked them whether they had

²⁴⁰ *Ibid.*, 964f., my emphasis.

²⁴¹ Cassese, Röling 1993, *The Tokyo Trial*, 22.

²⁴² *Ibid.*

²⁴³ *Ibid.*

the same kind of feeling [...] they were quite amazed and they explained that for them the war was over. [...] Nothing of the past should prevent us from [...] becoming friends.”²⁴⁴ Hence, whereas Röling had originally assumed that his own experience was universalizable and that war necessarily produced an insurmountable resentment, he later, and again due to personal experience, changed his mind about this social facet of war.

In addition, Röling also regarded war as economically problematic. In his interviews with Cassese, Röling applied the general question of whether war was economically beneficial or disadvantageous to the cases on trial in Nuremberg and Tokyo. In this context, Röling pointed out that while many German industrialists had hoped to benefit from the Nazis’ military and genocidal campaign and had therefore contributed to this campaign in a significant way, the economic elite of Japan, because “[t]hey were convinced that the war would disturb that [industrial] development” of Japan, had been opposed to the war.²⁴⁵ For this reason, Röling thought it correct that in the prosecution in Tokyo had not indicted industrial leaders.

Pal agreed with Röling insofar as the non-indictment of Japan’s leading industrialists was concerned, but challenged the way in which the question was posed. For once, Pal’s apologetic inclination led him to a conclusion which aligned with those of his dissenting his colleague: like Röling, Pal also believed that “the war potentialities of [Japan’s] industries” had not been a cause of the war.²⁴⁶ Yet at a more general level, Pal found arguments about war’s immediate economic costs and benefits to be besides the point. “To look at the problem thus,”²⁴⁷ he contended, blinded one to how the economic development of the West had historically been based on “transmuting military violence into commercial profit,”²⁴⁸ as over the course of centuries, the economic development of the West had been enabled by imperial conquests. Reframed in this

²⁴⁴ *Ibid.*, 22f.

²⁴⁵ *Ibid.*, 39.

²⁴⁶ Pal, “Judgment,” 1038.

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.*, 627. Note the connotations of the verb “to transmute” not with science, but with alchemy.

way, the economically problematic character of war was yet another reason why Pal was deeply sceptical of the tribunal's proclaimed intention to achieve a just and peaceful international order. Since "'the man of violence cannot both genuinely repent of his violence and permanently profit by it'"²⁴⁹ – a quote he took from Arnold Toynbee's work on the development of civilizations – Pal argued that so long as many of the colonial era's mechanisms of economic exploitation continued to exist, the Tokyo trial's selective criminalization of aggressive war was a sham.

Rational, controllable, ethical: assumptions about "civilized" war-time violence

In the second part of this section, and taking my cue from the findings of the preceding chapters as well as from Kopelman, I want to take a closer look at how "the assumption that the ravages of warfare should be mitigated as far as possible by prohibiting needless cruelties" was intertwined with "[t]he idea of 'civilized warfare.'"²⁵⁰ At the Tokyo tribunal, in how far did assumptions about the controllability of war-time violence overlap with ideas regarding this violence's (ir-)rationality? And how were they entangled with beliefs about "civilization" as a prerequisite of effective ethical action?

A first indication of the three dissenting judges' views regarding the controllability of war-time violence can be gleaned from their objections to the majority's concept of negative criminality. When the majority of the judges in Tokyo employed the concept of negative criminality to find the Japanese political and military leaders guilty of having failed to prevent war crimes, this presupposed that it was possible to control war-time violence by official order. As mentioned above, Bernard thoroughly disagreed with the concept of negative criminality. He did not believe war-time violence to be fully controllable, and rejected, for instance, the argument that "Army or Navy commanders can, by order, secure proper treatment and prevent ill-treatment

²⁴⁹ *Ibid.*

²⁵⁰ Kopelman, "Ideology and International Law," 397f.

of prisoners”: “‘Can’ is not right; ‘might’ only would be true.”²⁵¹ Therefore, criminalizing instances in which the military command structures failed to prevent atrocities made no sense to Bernard. Joining in with Bernard’s refutation of the concept of negative criminality, Röling argued that since “[n]o government or commander will be able to prevent all war crimes,” some “war crimes are likely to be committed.”²⁵² Likewise, Pal concurred that “the alleged atrocious incidents” committed by Japanese rank and file soldiers were “not at all unusual” insofar as “[t]here is no army or navy in the world which has not committed crimes of this nature.”²⁵³ All in all, the three dissenting judges were in broad agreement that effectively managing war-time violence from afar was far more difficult than the majority judgment assumed.

A number of passages of Röling and Pal’s writings allow for a closer examination of the entanglements between assumptions about control, rationality, and “civilization” to which Kopelman only alludes in passing. To start with, in a breakdown of how its “behaviour” in the Russo-Japanese War had enabled Japan to join “the group of ‘civilized states,’” Röling pointed out different ways in which warfare could be “civilized”:

“At that time the Japanese were praised for their gallantry in fighting and for honouring the laws of war. Perhaps that praise was a bit exaggerated by the British, because it was England that introduced Japan to the circle of ‘civilized nations’. [...] Fighting like a gentleman was, according to the British, an indication of ‘civilization’. Other commentators explained the admission of Japan to the group of ‘civilized states’ as a consequence of Japan’s military power. It had beaten China, and then Russia. [...] Once it had proved it was able to fight a war with modern, scientific weapons, Japan was recognized as a civilized nation.”²⁵⁴

I quote Röling’s account at length because it is indicative of several distinct ideas about what made the conduct of war “civilized.” Firstly, war-time violence was “civilized”

²⁵¹ Bernard, “Judgment,” 493.

²⁵² Röling, “Opinion,” 1064.

²⁵³ Pal, “Judgment,” 988.

²⁵⁴ Casesse, Röling, *The Tokyo Trial*, 73.

if it showed courage, but also restraint and respect for the laws of war. A second marker of “civilized” war-time violence was its modernity, or its being fought rationally and with “scientific” technology. And finally, its success meant that Japan’s conduct of the war had to have been “civilized” – for it was unthinkable that an “uncivilized” country could be militarily superior to a “civilized” one. These three markers of “civilized” conduct in war usually appeared in combination: “civilized” warfare was warfare which won wars whilst avoiding the use of atrocious and irrational kinds of violence – “needless cruelties,” as Kopelman puts it.

Moreover, Röling’s account also bespeaks a certain notion of “civilization” as a singular phenomenon of which Japan was not naturally a part. In this understanding, there was only one “civilization” and only one way of being “civilized.” Through mastery of this way, originally “uncivilized” nations could become “civilized” and gain admittance to “the group of ‘civilized states.’” Thus, in Röling’s account, the way in which the Japanese army had employed violence in the Russo-Japanese war was an indication of its proficiency in “civilized” conduct.

In light of these various aspects of “civilization,” how to make sense of the Japanese conduct of the Pacific War? Röling and Pal both interpreted the conduct of the Japanese in contrast to that of their German allies. Röling maintained that the Japanese conduct of the war was wholly unlike that of “the German scoundrels, the SS, who killed uselessly,”²⁵⁵ and Pal found that as far as the responsibility of military and political leaders for war crimes was concerned, “the case before us stands on a footing entirely different from what was found [...] at the trial of the European-Axis-Major-War-Criminals.”²⁵⁶ Yet in making these very similar differentiations, Röling and Pal developed entirely different arguments about war-time violence and “civilization.”

Although he himself did not put it like this, Röling’s main concern in this regard amounted to comprehending how the Germans could have committed irrational or

²⁵⁵ *Ibid.*, 47.

²⁵⁶ Pal, “Judgment,” 981.

“useless” war crimes and crimes against humanity in spite of their “civilization.” To respond to this explanatory challenge, Röling theorized that in the German conduct of the war, a first round of atrocities could be explained as an instance in which the German soldiers had been misled – and realizing what they had done, they thereupon perpetrated subsequent atrocities in order to “kill [their] conscience.”²⁵⁷ Hence, after their capacity for rational and ethical insight and action had failed the Germans once, this same capacity then drove them to perpetrate further irrational and unethical acts of violence. While this argument helped Röling to square the status of Germany as a “civilized” country with the irrationality he saw in the German conduct of the war, he maintained that “[i]t doesn’t help at all to understand the Japanese.”²⁵⁸ Yet this does not seem to have troubled him very much: for in comparison with the German conduct of the war, the Japanese conduct actually posed few interpretive problems for Röling. The Japanese army had used violence rationally and with little restraint, and Röling simply noted that it had thus not fought in as ‘civilized’ a manner as it had during the Russo-Japanese War.²⁵⁹

By contrast, Pal’s main objective in making sense of war-time atrocities was to point out the hypocrisy of trying the Japanese leaders for war crimes whilst leaving the nuclear bombing of Hiroshima and Nagasaki legally unaccounted for.²⁶⁰ The comparison, Pal argued, ought to be drawn not between the German and the Japanese, but between the German and the Allied powers’ conduct of the war: “[i]n the Pacific

²⁵⁷ Röling called this a “Macbeth crime”: “Macbeth is an honourable man, full of the ‘milk of human kindness’ (as Lady Macbeth says), who is led by circumstances to kill his king. After the murder he is not able to bear the burden of the memory of that deed.” Because he could bear to live with his “guilty conscience,” Macbeth went on to kill this conscience – “by committing more crimes, senseless crimes, like killing children and women and Banquo, just to harden himself, to get accustomed to murdering.” Röling called this second kind of murder as a “Macbeth crime” to refer to “crimes that are in reality committed to kill your own conscience, because you cannot stand the memory of some misdeed you have committed.” Through the concept of the “Macbeth crime,” Röling sought to explain “senseless” acts of violence committed by otherwise reasonable human beings. “Macbeth crimes” are hence shorthand for a “process” in which someone’s capacity for rational and ethical insight and action ultimately leads them to perpetrate irrational and unethical acts of violence (Cassese, Röling, *The Tokyo Trial*, 47).

²⁵⁸ *Ibid.*, 46f.

²⁵⁹ *Ibid.*, 73.

²⁶⁰ Cf. Kopelman, “Ideology and International Law,” 407.

war under our consideration, if there was anything approaching [the German crimes], it is the decision coming from the allied powers to use the atom bomb.”²⁶¹ Some of his contemporaries had urged that “the atom bomb comes to force a more fundamental searching of the nature of warfare and of the legitimate means for the pursuit of military objectives,”²⁶² yet to Pal, this call for a new reckoning about the nature of warfare only demonstrated the ignorance of those who issued it. “We need not stop to consider” the nature of warfare anew, wrote Pal, for “if any indiscriminate destruction of civilian life and property is still illegitimate in warfare, then, in the Pacific war, this decision to use the atom bomb is the only near approach to the directives of [...] the Nazi leaders during the second world war.”²⁶³

Moreover, Pal’s dissent also contained a twofold critique of assumptions about rationality and restraint as the combined markers of “civilized” warfare. On the one hand, Pal discerned a “persistent tendency on the part of the belligerents to shape their conduct according to what they consider to be their own needs.”²⁶⁴ This propensity, Pal argued, overrode any considerations of restraint and was characteristic not only of the Japanese army’s conduct²⁶⁵, but of that of the Allied forces, too.²⁶⁶ Not least in view of the Allied employment of nuclear bombs, the assumption that, in nominally ‘civilized’ warfare, the principles of means-ends rationality and restraint went hand in hand was clearly deceptive. On the other hand, Pal’s dissent also challenged assumptions about the rational logic of warfare. Musing that “[h]istory will say

²⁶¹ Pal, “Judgment,” 982.

²⁶² In the passage of his dissent under analysis here, Pal does not indicate the author of the quote. In another part of his dissent, Pal attributes the quote to Ellery C. Stowell, a member of the editorial board of the American Journal of International Law (*ibid.*, 1025).

²⁶³ *Ibid.*, 982.

²⁶⁴ *Ibid.*, 532.

²⁶⁵ However, in another part of his dissent, Pal also made the opposite argument: that any atrocities that had been committed by the Japanese army were without a doubt “devilish and fiendish” in nature, yet were “stray cases” and not typical of the army’s conduct more generally (*ibid.*, 988).

²⁶⁶ Röling made a similar argument about the conduct of the US military both during the Second World War and the Vietnam War: “Why did the Americans misbehave in Vietnam? For the same reason [as the Japanese military authorities who did not prevent war crimes during WWII]: they thought they could achieve victory more quickly. In Tokyo, an American general once said to me: ‘When my boys have to get somewhere, your laws of war are just monkey-business to me’” (Cassese, Röling, *The Tokyo Trial*, 72).

whether any outburst of popular sentiment against the usage [the atomic bomb] is irrational and only sentimental”²⁶⁷, Pal highlighted the speciousness of the seemingly straightforward argument that the Allied bombing of Hiroshima and Nagasaki had simply been a rational step to win the war. Hence, Pal’s dissent questioned not only the assumption of an infallible link between rationality and restraint in the conduct of presumably ‘civilized’ warfare, but also what rationality as such actually meant.

A final insight that can be gleaned from Pal and Röling’s writings is the crucial role that racism and de-humanization played in enabling the bombings of Hiroshima and Nagasaki. In another instance in which Pal took issue with what he perceived to be his contemporaries’ ignorance, he argued against the idea that “these blasts [the atomic bombs] have brought home to mankind ‘that every human being has a stake in the conduct not only of national affairs but also of world affairs’”²⁶⁸: “Perhaps these explosives have awakened within us the sense of unity of mankind [...]. But certainly these feelings were non-existent at the time when the bombs were dropped.”²⁶⁹ Similarly, Röling contended that the US army saw “the Japanese as a sub-human race. The bombing of the Japanese cities, followed by the atomic bombing of Hiroshima and Nagasaki, was made possible by precisely that feeling that it was not human beings they were cremating by the hundreds of thousands.”²⁷⁰ Röling conjectured that “the notion of white supremacy” and the “racial discrimination” experienced by the Japanese “may have been one of the roots of the Pacific War” only with considerable hindsight.²⁷¹ Pal’s dissent, by contrast, was incensed and indignant over the matter. Highlighting that “the word humanity” had routinely been used “so as to exclude reference to the unlucky dominated nations of the world,”²⁷² Pal concluded that he did

²⁶⁷ Pal, “Judgment,” 982.

²⁶⁸ *Ibid.*, 574. Pal does not indicate the quote’s origin.

²⁶⁹ *Ibid.*, 574f.

²⁷⁰ Cassese, Röling, *The Tokyo Trial*, 24.

²⁷¹ “[I]n colonial times the notion of white supremacy was incredibly all-pervasive. The Japanese always tried to bring themselves within it and to be regarded as belonging more to the white race than to the other Asian countries. They resented very much that our racial discrimination also applied to the Japanese and the Chinese. That racial discrimination may have been one of the roots of the Pacific War” (*ibid.*, 25).

²⁷² Pal, “Judgment,” 609.

not “perceive any such feeling of broad humanity in the justifying words of those who were responsible for [the atomic bombs’] use.”²⁷³

To summarize, in this section I have inquired into formulations of war as legally, socially, and economically problematic, as well as into understandings of warfare as a rationally controllable problem and a problem of “civilization.” At the Tokyo tribunal, whether and how war and warfare constituted actionable problems in and for international politics were contentious questions: next to a sharp divide between Pal and virtually all of his colleagues, there were also many smaller fissures separating Bernard and Röling’s stances on the matter both from each other and from the majority. The analysis of these controversies has produced a number of insights into the premises enabling and structuring different formulations of the problem of war in Tokyo. While these premises defy any straightforward systematization, I want to suggest that in one way or another, they all differ in their assumptions about the temporal and spatial scope of the problem of war as well as in their awareness of this scope.

To start with, looking for and wondering about conceptions of war as a legal problem led me onto competing views of the nature of war’s wrongness. These views not only situate the problem of war within differing temporal and spatial horizons, but also show differing degrees of awareness of this situatedness. To understand war’s wrongness as naturally evil or a *malum in se* assumes the existence of a temporally and spatially ubiquitous legal order, a legal order simultaneously present and ever-present which the criminalization of war could help to keep in this timelessly present state. By contrast, the view of war’s wrongness as a wrongness by decree or a *malum prohibitum* presupposes a legal order which is historical – and political – in the sense of being made and re-made by humans. Against both of these understandings stands Pal’s view of war as an in principle neutral tool, yet a wrong in its historical actuality. When combined with the critique of just war thinking’s blindness towards the unjustness of

²⁷³ *Ibid.*, 574f.

the wars waged by European colonial powers, this view considers war's wrongness in transtemporal and transspatial terms: because of war's historical wrongness and because of the ongoing effects of this wrongness in the contemporary international, war, at present, ought to be seen not (only) as a wrong, but (also) as a right of those who have been so negatively effected by it in the past.

Different premises about the temporal and spatial nature of the problem of war were also inherent to the dissenting judges' formulations of war as a social and an economic problem. While Pal's assumptions about the de-humanizing effects of war-time violence claimed applicability across time and space, Röling's view of the social problem of war, based on his personal experiences, emphasized the non-universality of war's social consequences. With regard to war as an economic problem, the disparity between the majority judgment and Röling's stance on the one hand and Pal's dissent on the other brings into focus the delimitations inherent in how questions about war's economic aspects are formulated. Specifically, by fixating on war's more immediate and more immediately observable costs and benefits, the familiar question of whether war is economically advantageous or disadvantageous often overlooks the crucial role of longer-term economic developments: for instance, the role that colonial exploitation and violence have played in the economic development of the West. It disregards, that is, what Pal referred to as the transmutation of "military violence into commerical profit."

Finally, as I tried to disentangle the various aspects of the idea of "civilized" warfare, I happened upon not only different formulations of warfare as problematic, but also different motives for making sense of the occurrence of presumably problematic war-time violence. Here, I would like to suggest that these different interpretive intentions assigned distinct temporal and spatial scopes to the problem at stake. To develop this contention, I revisit Shilliam's conceptualization of European-modernity originally introduced in Chapter 3 of this thesis. This conceptualization highlights that whereas the temporal aspect of non-European-modern subjectivity can potentially be overcome, its spatial aspect is practically impossible to surmount. For while "pre-/yet-

to-be-modern subjects” can employ “techniques through which they might cultivate a sufficient ethical adeptness,” they will never be able to claim the “European ancestry” which is the spatial marker of European-modernity.²⁷⁴

For the example under study here, Shilliam’s conceptualization of European-modernity highlights the ambiguities inherent in a “civilizational” understanding of the problem of war which attempted to locate this problem firmly outside European-modernity. Firstly, warfare is problematic insofar as it is “uncivilized,” yet determining the “civilizational” quality of particular instances of war-time violence might pose a conundrum: insofar as warfare served as a technique for becoming “civilized,” the conduct of a particular war (for example, the Russo-Japanese War, as discussed by Röling) could be both “un-civilized”/problematic and “civilized”/unproblematic – depending on the point in time from which it was regarded. Secondly, and as indicated by the explanatory challenge that the German conduct of the Second World War posed for Röling, the temporal and the spatial axis of the “civilizational” understanding of the problem of war as located outside European-modernity functioned according to different logics: whereas the atrocities committed by the German army were a temporary lapsus of “civilization,” an aberration of otherwise – as per their European-modern ancestry – “civilized” people, the atrocities committed by the Japanese were the deeds of people who could not claim such ancestry or permanently “civilized” status.

In spite of such ambiguities, however, this “civilizational” understanding of the problem of war was difficult to challenge – as Pal’s dissent attests to. Pal made countless direct and indirect references to the violence and warfare through which European powers subjugated people in other parts of the world. There are also multiple passages in which Pal lumps together the Allied dropping of nuclear bombs with the atrocities committed by the German army. In effect, Pal’s argumentation puts into question the meaning of ideas such as rationality, restraint, and “civilization” in

²⁷⁴ Shilliam, “Decolonising the Grounds,” 250f.

the conduct of war. Pal himself did not put these pieces together, yet the bigger picture beginning to emerge from his arguments is one in which the problem of war is no longer located outside European-modernity: it is a picture of European-moderns who realized their professed proficiency in ethical matters – their alleged “civilization” and their exclusive capacity for moral reasoning and action – through the violence they inflicted on assumedly “uncivilized” people. Nonetheless, what the secondary literature has mostly discussed with regard to Pal’s dissent is not his radically different vision of the spatio-temporal location of the problem of war, but his stance towards imperial Japan – which, though worthy of critique, is perhaps not all that different in kind from his colleagues’ stances towards the respective imperialisms that they sympathized with.

Conclusion

With the aim of looking beyond disciplinary legacies of “Tokyoberg” as an origin and symbol of the power of law over war in international politics, in this chapter I have directed my gaze at three main areas of inquiry. First, I attended to different approaches – and objections – to the criminalization of war and to their inherent assumptions about the state of the international and the possibilities of progress. The majority judgment in Tokyo criminalized war through a variety of approaches, and in effect made it into a variegated crime. To varying extents, the three dissenting judges disagreed with this combinatory approach. Bernard found aggressive war to be timelessly and universally criminal and was therefore largely indifferent towards his colleagues’ efforts at criminalization. Röling sought to render aggressive war criminal by likening it to a domestic political crime. Finally, Pal argued against any criminalization of war. Moreover, these different approaches to criminalization were based on different understandings of the international as the socio-political realm in which criminalization was to be effected. In particular, the judges on the bench in Tokyo held markedly different views of the present state of the international and the necessity and meaning of international progress. The majority advocated a bounded

progress towards peace that would leave intact the international status quo. The dissenting judges disagreed: Röling envisioned that international peace would require alterations of the principle of state sovereignty, and Pal argued for a radical kind of international progress that would transcend the presently existing and historically constituted relations of domination and violence. These visions took the criminalization of war to be, respectively, an instrument for achieving international progress, an instrument for securing progress that had been achieved by other means, and an instrument that hindered progress. In sum, the first section of the chapter thus showed how criminalization, far from being a ready-made tool for rendering war into an actionable problem, required construction – and that underlying the arguments through which it was constructed were wholly different understandings and visions of international politics.

Secondly, I looked at epistemological aspects of the Tokyo tribunal's work. To probe how the tribunal made war into not only an actionable, but also an epistemic object, I focused on the three dissenting judges' contentions about the majority's practices for determining the truth content of pieces of evidence and for drawing inferences from evidence to evidentiary facts and from evidentiary facts to the *facta probanda* of aggressive war and conspiracy thereto. On this basis, I then reflected on the analytical usefulness of a number of concepts developed in previous chapters in trawling this empirical material. While the concept of *epistemic practices* did not offer much analytical grip, the concept of *ways of knowing* enabled me to illuminate the epistemological aspects of two distinct legal traditions, the common law or Anglo-Saxon and the civil law or continental system of criminal law. Finally, conceptualizing the judge as a *subject of knowledge* allowed me to pose anew the question of the political nature of knowledge: not (only) as a question about the instrumentalization of knowledge-as-information for political purposes, but (also) as a question about the positioning of the epistemologically capable subject in relation to the object of their knowledge.

Thirdly, I scrutinized the three dissenting judges' writings for how they conceived of war as a problem of international politics. In the first part of the section, I looked at formulations of war as a legal, social, and economic problem. Apropos war as a legal problem, I traced controversies surrounding the majority's attribution of responsibility for aggressive war to individuals as well as its (re-)turn to just war thinking. Moreover, I discussed the divergent assumptions about the nature of war's wrongness underlying the Tokyo Tribunal's different approaches to the criminalization of war. All three of the dissenting judges opposed the majority's assumption of war as a wrong both due to its inherent nature (war as evil or *malum in se*) and insofar as humans decided to make it so (war as a statutory crime or *malum prohibitum*): while Bernard and Röling held war to be, respectively, either only a *malum in se* or only a *malum prohibitum*, Pal stipulated war as a principally neutral tool, yet a wrong in its historical actuality. With regard to war as a social problem, I discussed Pal's understanding of the processes whereby war and war-time violence are not so much the result as the cause of enmity and de-humanization, as well as Röling's experience-based intuition that the social problem of war was not of a universal nature. Finally, with respect to war as an economic problem, Röling's reflections about the immediate economic costs and benefits of the Pacific War contrasted with Pal's argument about the role aggressive war had played, over the *longue durée*, in the development of the international order.

Thereafter, the third section also looked into the notion of "civilized" warfare and its underlying assumptions about war-time violence as rational, controllable, and ethical. Here, all of the three dissenting judges disagreed with the majority's concept of "negative criminality" and its assumptions about the extent to which war-time violence is controllable. Furthermore, I pondered how the notion of "civilized" warfare operates to make some instances of war-time violence more puzzling than others. Finally, Pal's dissent in particular questioned not only the notion that "civilized" warfare is characterized by a balance between the purposiveness of violence and the ethical imperative of restraint, but also the meaning of the idea of

means-ends rationality in the nuclear age. The section ended with a reflection on what these formulations of war as a legal, social, and economic problem and of war-time violence as “(un-)civilized” implied about the temporal and spatial scope of the problem of war.

How do these manifold points compare to the findings of the previous chapters, and how do they relate to the problematization of war in contemporary international politics? To prepare the ground these larger questions, I again want to conclude the chapter by summarizing some of the insights it affords into the co-productive relationship between different analytical elements as well as into the constitutive exclusions of how war as an object of knowledge and action was configured in the example under study. As to the co-productive relationship between war’s becoming an actionable problem and its formation as an epistemic object, the materials discussed in this chapter illustrated, first, how the instrument of criminalization and the knowledge-production requirements that came with it produced war as a particular kind of problem. Consider, for instance, how the preconditions for empirical knowledge about war contributed to the court’s decision to employ the concept of conspiracy. As Kopelmann points out, “[b]y considering the defendants as individuals in order to avoid any Act of State defense and then drawing them together in a conspiracy, the Judgment attempted to escape technical, evidentiary limitations on its decision-making.”²⁷⁵ Employed to circumvent evidentiary standards, the concept of conspiracy not only made of war, as Kopleman notes, a problem for which individuals were responsible. It also implied war as a problem which was inherently wrong rather than a wrong by human decision.

Secondly, the chapter also indicated how different theories of truth can contribute to the production of knowledgeable subjects. In the example of the Tokyo Tribunal, some judges’ self-understandings seem to have been informed by a correspondence theory of truth. Supposing that truth was a property of the object to be known, this theoretical

²⁷⁵ Kopelman, “Ideology and International Law,” 394. Cf. Cassese, Röling, *The Tokyo Trial*, 58.

stance led them to assume a position to the outside of the objects they were seeking to know. Other judges, by contrast, seemingly acted on the assumption of a coherence theory of truth according to which truth depended on a judge's insight into the overall constellation of pieces of evidence. This made of truth a property of subjective (and intersubjective) reasoning. Moreover, it assumed a subject whose epistemic capacities stemmed not from their positioning towards the object of their knowledge, but from their experience and, potentially, their situatedness within historical and political contexts.

As stated before, I do not mean to suggest that Pal, Rölöng and their colleagues were aware of, let alone explicitly debated or actively sought to further these different understandings of themselves as knowledgeable subjects. Rather, and as explained in Chapter 2, I hope that my analysis of the historical (co-)production of different objects, subjects, and their preconditions can ultimately serve as material for getting to work on the constitutive exclusions of our contemporary ways of knowing and addressing the problem of war. In this context, by illustrating how different theories of truth imply differently constituted subjects of knowledge, the above discussion suggests as political an aspect of our ways of knowing which is usually not seen as such – namely, our methodological and epistemological, presumably “underlying” assumptions.

What else does this chapter's analysis suggest in terms of the constitutive exclusions of the problematization of war? Three further points seem particularly noteworthy. For one, the chapter has pointed to the constitutive exclusions of what it meant, to the judges on the bench in Toyko, for war and warfare to be “(un-)civilized.” In this context, Pal's dissent questioned his colleagues' understanding of the notion of “civilized” warfare as warfare that was rational both in the sense of being purposive and the result of means-ends calculations and in the sense of being restrained and controlled. The point this raises is that the notion of “civilized” and rational warfare worked to exclude the possibility that in any war, all of the parties to the war might engage in both rational and irrational violence, and that there was thus no stable and straightforward connection between the presumed “rationality” of warfare and its

morality. Irrespective of the differing conclusions the judges in Tokyo reached about the criminality and morality of the violence committed by the Axis and Allied powers in the Pacific War (or perhaps, irrespective of which party one or another judge sought to be an apologist for), the materials presented in this chapter thus highlight how the idea of “civilized” and rational warfare structured which violence and which wars were and were not seen as problematic.

This particular blindness of international law, Pal’s dissent suggested, might be explained by its complicity in bringing about the current international order. “When international law will allow a victor nation thus to define a crime at its will,” Pal wrote, “it will [...] be surprised to find itself back on the same spot whence it started on its apparently onward journey several centuries ago.”²⁷⁶ International law would find itself in a situation, that is, which was not all that different from “those days when [the victor in a war] was allowed to devastate the occupied country with fire and sword, appropriate all public and private property therein, and kill the inhabitants or take them away into captivity.”²⁷⁷ It was this sort of aggressive war which, Pal argued, had brought about the contemporary international order, and this sort of aggressive war which he had in mind when he emphasized that “there was hardly a big power which was free from that taint,” yet that “all the powerful nations” were not equally held to account for by international law.²⁷⁸ International law’s capacity for problematizing war, Pal might be taken as suggesting, depended not least on its ability to ignore its historical complicity in the crimes it was now judging. This made law ill-positioned to grasp – let alone address – the aggressiveness of the wars by means of which the Allied powers had built their empires and the violence and inequality which still defined the present-day international.

A final point I would like to note is that for all of the challenging questions it raised about the constitutive exclusions of criminalization as a means for problematizing war,

²⁷⁶ Pal, “Judgment,” 542.

²⁷⁷ *Ibid.* In a sarcastic tone, Pal added: “Perhaps humanity will also feel the same inward surprise though it may be civilized enough not to give any outward expression of the same.”

²⁷⁸ *Ibid.*, 574; cf. 605.

Pal's dissent did not offer a way out of the conundrum it pointed to. Pal did imagine that at an unspecified future point in time, the international as a kind of human association might no longer be a society of states "isolated in spite of their association" but a community of nations founded on the harmonious co-existence of its constituent members.²⁷⁹ However, rather than specifying means or mechanisms for the transformation of the international into a community no longer in need of the instrument of war, Pal focused on developing the argument that in the contemporary international, states should not be deprived of this instrument. The larger question this raises is this: what potential do different ways of problematizing war carry for imagining progress, and specifically for conceiving of less exclusionary ways for realizing a future without war?

²⁷⁹ It is here that Pal's nationalist leanings come to the fore: for the alternative envisioned by Pal was an international community founded on the principle of nationalism (*ibid.*, 569f.). However, just a few pages later Pal abrogated nationalism: "I doubt not that the need of the world is the formation of an international community under the reign of law, or correctly, the formation of a world community under the reign of law, in which nationality or race should find no place" (*ibid.*, 578).

Reflective vignette 3

On practices of looking

Besides raising questions large and small about criminalization as a means for problematizing war, there has also been another purpose to the preceding chapter. Inspired by one of the insights of my analysis of the Balkan Commission's work – namely, that the commissioners at some point swapped their practice of collecting materials for the practice of direct observation – the exercise of “looking beyond ‘Tokyoberg,’” as per the preceding chapter's title, was one of experimenting with my own practices of looking.

Originally, much like my experimentation with practices of writing in Chapter 4, this experimentation with practices of looking was a response to pragmatic imperatives that had arisen in the course of my historical research. This time round, the challenge was that the archive on the international military tribunals in Nuremberg and Tokyo was far too vast and well-researched to allow for the kind of comprehensive and simultaneously fresh look which I had previously taken at other archives. It was clear that I would have to take decisions about my focus and my selection of materials. Yet it was also clear that I would have to do so without being able to rely on the kind of preliminary comprehension of the whole of the archive and the secondary literature that, or so I had found comfort in imagining, had formed the basis of my decision-making process when researching the Balkan Commission, for instance.

In reflexive research, Yanow writes, the “purposive selection of texts, respondents, and/or observational posts” can serve to “intentionally and self-consciously address the oblique, partial sight that characterizes all human observation.”¹ Heeding this advice, I decided to make the challenge of this particular archive work to my advantage: I would experiment with my delimitation of the analysis' field of view and

¹ Yanow, “Neither Rigorous Nor Objective,” 77.

with my definition of the vantage point from which the analysis was conceived. I was taking a gamble. Would looking at only a small number of marginal documents afford me enough insights to base a chapter on them? And would this chapter not fall short analytically when compared to the previous two, in which individual perspectives by design retreated behind emerging orders of things?

Developing genealogical practices of looking is a difficult task: as Verena Erlenbusch puts it, the challenge consists in cultivating practices capable of “recognizing the limitations of our system of thought.”² To start with, genealogical research needs to be familiar with the archive’s order of things, yet it also needs to question the archive’s categories and the limits that these impose on what we can spot in the sources we gather. This is what I have attempted to do in looking at the criminalization of war in the practice of the IMTFE: I have tried to understand what this criminalization meant to those who were debating it in Tokyo and what it has meant to those who have researched it since, and at the same time, I have sought to take these debates as instances of the problematization of war and to weigh how their categories impinge upon my interest in this problematization. Moreover, genealogy must also be mindful of those of its limitations which, inevitably, stem from its own emerging ways and practices. My evolving notion of the problematization of war, for instance, had been enabled not least by the concepts, practices, and empirical orders of things that I had established through my work on previous chapters. Therefore, as part of looking beyond “Tokyoberg,” I have tried to query some of these concepts, practices, and orders. Finally, genealogy must not take its own point of view for granted. My perspective on the things I was researching, I had come to realize, could not be based on an Archimedean point, but was part of, affected by, and sometimes interrupted and destabilized by my research. To make good on this insight, the intentionally partial gaze that I have honed in Chapter 5 has sought to part ways with the ideal of the all-

² Verena Erlenbusch cited in Colin Koopman, “Ways of Doing Genealogy: Inquiry after Foucault. A Group Interview with Verena Erlenbusch, Simon Ganahl, Robert W. Gehl, Thomas Nail and Perry Zurn,” *Le foucauldien* 3, no. 1 (2017).

seeing observer. All in all, then, genealogy needs practices of looking that will recognize when they reach their limits. “When does a particular set of data fit into existing categories and when do we need new categories?,”³ Erlenbusch asks. And we might add: when do we need new practices?

Like other epistemic practices, practices of looking are political, too. As John Berger has argued, “we never look at just one thing; we are always looking at the relation between things and ourselves.”⁴ Hence, our ways and practices of looking are political in how they forge relations, producing us as subjects for how we are interconnected with, yet distinct from that which – and those whom – we are observing. With regards to war, this implies that our practices of looking are not only political insofar as they are instrumentalized for certain purposes, i.e. insofar as “what is ‘seen’ and ‘witnessed’” in war, as Joanna Tidy writes, becomes “a material of political currency” through which we “make sense of, make, and remake war as a thing socially known and in existence.”⁵ Our practices of looking are also political for how the “frames” through which we make sense of war and of the lives it takes, as Judith Butler contends, help to enable this continued existence of war: for how these frames “work to differentiate the lives we can apprehend from those we cannot,” and for how they thus “not only organize visual experience but also generate specific ontologies of the subject.”⁶ For short, our practices of looking help produce – and are in turn at least partially reproduced by – the problem of war and us in relation to it.

When Foucault suggested that one key “trait” of genealogy was “its affirmation of knowledge as perspective,” he was taking issue with what he perceived to be a standard practice on which his colleagues’ conduct of research was predicated: “Historians take unusual pains to erase the elements in their work which reveal their

³ *Ibid.*

⁴ John Berger, *Ways of Seeing* (London, UK: Penguin, 2008 [1972]), at 9.

⁵ Joanna Tidy, “Visual regimes and the politics of war experience: Rewriting war ‘from above’ in WikiLeaks’ ‘Collateral Murder,’” *Review of International Studies* 43, no. 1 (2016), 95-111, at 95.

⁶ Butler, *Frames of War*, 3. For the argument that the epistemology of war, or war’s “frames,” enables war’s ontology, cf. *ibid.*, 29.

grounding in a particular time and place, their preferences in a controversy – the unavoidable obstacles of their passion.”⁷ How could historical research be otherwise? Foucault’s answer was a call for historical research which would neither dissolve itself “before the objects it observes” nor dissolve these objects under its observing gaze.⁸ Instead, historical research was to “[give] equal weight to its own sight and to its objects” so that in its study of the histories of these objects, it would also study the history of itself and its ways of knowing.⁹ In this way, genealogy could become become a “curative science.”¹⁰

Foucault’s argument is relevant here not so much for its applicability to historical research then or now, but for the question it raises about a genealogical curiosity. How does such a curiosity strike the balance between its own sight and the perceptions, perspectives, and knowledges it studies? For one, it could notice the resemblances between itself and these knowledges. It could look, for instance, into the “passion” that, as Foucault contends, is inevitably a part of any will to knowledge. Indeed, I have often recognized myself in the sources I studied, for example in the Balkan commissioners’ exhilaration upon seeing something that had presumably not been seen before (at least not by “Western” eyes) and also in their terror of seeing the traces of the wars’ violence on people’s bodies, on houses, on landscapes.

At the same time, Foucault also makes it clear that a genealogical gaze and the curiosity it expresses and furthers cannot but be afforded from our being situated in a certain time and place. Here, the question of striking a balance becomes an ethical one. With Zurn, we might

“wonder how much flights of curiosity are the purview of privilege. Living in the grip of marginalization, one’s curiosity is often hard, cold, and quick. How can I survive this moment? [...] When I endorse curiosity as a political practice, I am forced to confront what

⁷ Foucault, “Nietzsche, Genealogy, History,” 90.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

that assumes about the practitioners of curiosity.”¹¹

In this sense, however much my taking a genealogical look at the problem of war is intended to re-implicate me in this problem, I can only afford this look because I am not, as Zurn would say, immediately in the “grip” of war. What does this imply for the ethics of a genealogical curiosity? How can such a curiosity best use the privilege that enables it?

Foucault once wrote that “[w]e must not imagine that the world turns toward us a legible face which we have only to decipher.”¹² Yet rather than as a cause for despair, we should see this as a chance: a chance to question how our practices of looking make some worlds and not others, and to see in our crafting of practices and ways of looking a means of changing both ourselves and the worlds we are studying.

¹¹ Zurn cited in Koopman, “Ways of Doing Genealogy.”

¹² Michel Foucault, “The Order of Discourse,” in Robert J. C. Young (ed.), *Untying the Text: A Post-Structuralist Reader* (London, UK: Routledge, 1981), 48-78, at 68.

Conclusion

This thesis started with the observation that for all of our efforts at debunking IR's foundational "myth of 1919," we still seem to take for granted one of this myth's key features: namely, war as an analytical object which we can know about and take action towards. From this observation onwards, the thesis developed a genealogy of war as a problem of international politics which pursued two lines of inquiry. On the one hand, I inquired into war's becoming an object of empirical knowledge and practical action – and, on the flipside of this becoming, into the histories of our ways and practices of making war thus. On the other hand, I also inquired into, reflected upon, and experimented with genealogy as a way of doing historical and critical research on our contemporary problems. My aim in this twofold inquiry was to clarify, complicate, and enable further critical work on our ways of knowing about and addressing the problem of war, and to begin to undertake this work and thus to demonstrate what is at stake in it.

Or at least, this is how I announced it in the introduction. In fact, however, it was only in the course of working out the genealogy proposed in this thesis that I realized what I was working on – the problem of war and our (IR and other) ways of addressing it – and that I grasped what I was doing with and to genealogy. Looking back now, my point of departure and the paths and purposes I pursued from this point onward seem much more acute than they did at the outset. And so they should. For as I have argued throughout the thesis, genealogy is, amongst other things, a way of rendering existing problems further problematic.

This argument about genealogy as problematization is one of the answers the thesis gives to the question I posed in the introduction: What does a genealogy of the problem of war in international politics do to our understanding of war and to our conception and practice of genealogy? Such a genealogy, this thesis argues, questions how we understand war, our ways of knowing about it, and our attempts at

problematizing it. It also questions how we conceive of and practice genealogy, how we look upon our own knowledge practices, and how we pursue our ways of critique. In the end, such a genealogy might even change how we understand ourselves, be it as scholars of war and peace, as transitional justice researchers, as genealogists, critical methodologists, or simply as students of IR.

A genealogy of the problem of war effects these changes not through one grand gesture, but rather in many small ways, altering, often ever so slightly, the questions asked, the materials considered, the facets pointed out, the practices undertaken. Through this way of proceeding, the genealogy proposed in this thesis has produced manifold insights which, or so I hope, can be taken up to get to work on our contemporary problematization of war. Yet this same way of proceeding, having unravelled and made impossible any assumption of the problematization of war as a coherent object of analysis or of genealogy as a unified means of studying this object, now also makes the thesis challenging to conclude

Taking up the challenge, my aim in this conclusion is to bring together the thesis' main findings regarding the problem of war and regarding genealogy. First, I compile the insights shed by my inquiry into the histories of our ways of knowing about and addressing war, and I ponder what these insights, understood as working materials, can tell us about our contemporary ways of rendering war problematic. Secondly, I summarize my conceptual exploration of and practical experimentation with genealogy. Both parts of the conclusion also explicate the contributions this thesis makes to different kinds of IR (and non-IR) literatures. In the end, however, genealogy is a way of doing history and critique that renders problems newly intelligible without, however, submitting them to any "principle of closure"¹ – and I therefore conclude by suggesting genealogy as a way of becoming curious, thus posing the question of what is yet to come.

¹ Foucault, "What is Critique?," 64.

The problematization of war in international politics: histories of the present as working materials

Taking genealogies to constitute histories of how our present problems have come to be, the genealogy of the problem of war proposed by this thesis aims not only to denaturalize this problem, but also to equip us with materials with which we can get to work on remaking it. As Koopman has argued, Foucauldian genealogies “provide some of the materials people will need to remake themselves,” materials which “are nothing other than the historical accumulation of the diverse practices [...] that form the problematizations in which they continue to operate.”² In this sense, the insights which this genealogy affords into the contingent historical becomings of our contemporary problem of war not only underline that our present could have been – and hence, that our future could be – otherwise. They also hope to enable a reassembling of our ways and practices of addressing this problem and of our selves as related to and, insofar as we are IR scholars, oftentimes also defined by it.

With this understanding of genealogy in mind, this section presents the main insights produced by this thesis’ genealogy of the problem of war as materials to be taken up in getting to work on our complexly constituted present. While genealogy, as Foucault once put it, involves the “development of a given into a question,”³ and while it provides us with materials with which we can begin to work out what to do with this question, it does not give us an answer to the questions that it raises – it does not tell us what to do. Therefore, it is ultimately up to you, the reader, to decide what you will do with the materials offered by this thesis, and whether and how you will make use of them. Nonetheless, and perhaps to start you off, I do want to do three things. First, I provide a summary of the thesis’ main historical findings, drawing comparisons and indicating overarching points. Then, I use these findings to raise a number of questions about the problem of war and our contemporary ways of coming at it. Thirdly, I

² Koopman, *Genealogy as Critique*, 143.

³ Michel Foucault, “Polemics, Politics and Problematizations,” in Paul Rabinow (ed.), *The Essential Works of Michel Foucault, Vol. 1: Ethics*, Translated by Robert Hurley and Others (New York, NY: The New Press, 1997), 111-120, at 118.

suggest for consideration one point that seems to me to be particularly worthy of renewed critical efforts. The section ends with a brief synopsis of the contributions this genealogy of the problem of war makes to different literatures within and beyond IR.

Chapter 1 commenced the genealogical work by establishing starting points for the analysis to come as well as by accounting for how I initially arrived at these starting points. To this end, the chapter's first part turned to the example of the contemporary international politics of transitional justice, a politics crucially concerned with addressing different kinds of large-scale violences, among them war and violent conflict. Reviewing transitional justice's history from the 1980s to the present day, I traced changes in its understanding of "truth" as well as in the instruments that it employs in its search for this truth. I then outlined how war is configured as a problem of knowledge and action at the intersection of several broader developments within transitional justice. I argued that transitional justice today exemplifies a particular knowledge-action-nexus: a conjunction in which war constitutes a problem whose future recurrence can be prevented by means of knowledge about its past occurrence.

Taking up this starting point, I then analyzed four historical examples of initiatives that undertook to counteract war by producing knowledge about it. Studying primary sources collected from physical archives in Europe and the United States as well as from online repositories, I focused on how these initiatives formulated war into a practically actionable problem and how they sought – or, in one case, avoided seeking – empirical knowledge of it.

Chapter 3 considered the example of a commission of inquiry into the Balkan Wars of 1912 and 1913. Sponsored by the Carnegie Endowment for International Peace, the so-called Balkan Commission travelled to the different countries of the region immediately after the end of the Second Balkan War and, a little less than a year later, published its findings in a report intended to give an account of the Balkan Wars powerful enough, in the words of one of the commissioners, "to make another war

impossible.”⁴ Yet the report’s publication preceded the outbreak of the First World War by mere weeks, and the commission’s lofty goals soon fell into oblivion. In my analysis of the commission’s work, I focused, first, on the formulations through which the commissioners perceived war to be problematic. I examined how they weighed the prospects of success of legally problematizing war as such against those of a legal problematization of war-time violence, and I explored how, inspired by ideas stemming from recently emergent empirical disciplines such as economics and psychology, the commissioners proceeded to render war-time violence into an economic and a moral problem. Secondly, the chapter considered the commissioners’ purportedly “scientific” way of knowing war. Here, I showed how both the form of the commission of inquiry and the knowledge practices through which the commissioners carried out their research – their practices of looking and of writing – were the result of contingent and often enough accidental historical processes. I also considered some of the preconditions of the commission’s form, practices, and ways of knowing. Finally, I inquired into European modernity as the place in space and time from which the commissioners undertook their research into and their actions upon the problem of war, and I showed how this place was predicated upon a “civilizational” hierarchy.

Moreover, the chapter examined the co-productive interrelationships between these various elements of the Balkan Commission’s problematization of war. For instance, I showed how the form of the commission of inquiry facilitated the structuring of the problem of war as one of corrigible deviance from a behavioural norm. I also discussed how the commissioners’ formulation of war as a legal, economic, and moral problem was expedited by – and, in turn, helped produce as all the more urgent – their “scientific” knowledge practices and way of knowing. Overall, I argued that the Balkan Commission’s work constituted an example of how, in the early twentieth

⁴ CEIP Archive, Vol. 121, Letter Dutton to Butler, 23 July 1913.

century, war was seemingly all at once becoming a this-worldly problem and an empirically knowable and practically actionable object.

Finally, the chapter highlighted the constitutive exclusions on which the Balkan Commission's problematization of war depended. First, I showed how the commissioners defended their preferred, rational formulations of war-time violence as a problem of corrigible deviance against alternative, dialectical formulations of war as an expression of class struggle or also as a driver of historical progress. Secondly, in their aspiration to empirical ways of knowing war, the commissioners dismissed metaphysical systems of thought such as philosophy or religion. Lastly, to make themselves into subjects capable of knowing and addressing war, the commissioners skillfully navigated the countervailing demands placed on them by the "civilizational" hierarchy between European modernity and its non-European and non-modern (or not yet modern) others: to be persuasive to their international audience, they cast the Balkan wars as both European modern and "uncivilized," and they both worked closely with and kept their distance from the "peasants" whom they met on their journey. In this way, the Balkan Commission's claim to epistemic and moral authority in questions of war and to membership in an emerging international civil society concerned with these questions excluded the Balkan countries' governments and citizens from this authority and this society – and simultaneously excluded the commissioners from the various problems of war they formulated.

Chapters 4 and 5 followed up on some of the leads that Chapter 3 provided. In Chapter 4, I studied two groups of international jurists who, in the aftermaths of the Franco-German War and the First World War, debated the prospects of an international tribunal to persecute and try offenses against the laws of war. My reading of these debates began by looking at war and war-time violence's becoming problematic. Thereupon, I focused on the practices through which the jurists debating the Franco-German War imagined, as one of them put it, that it would be possible to "[appreciate],

from the point of view of International Law, the facts of the last war,”⁵ as well as on why their colleagues convening fifty years later considered such an appreciation to be a dangerous undertaking. Finally, I again scrutinized “civilization” as a point of view from which to know about and take action against war.

The views of these two groups of jurists on war and what could be done against it make for an interesting comparison with those of the Balkan Commission. Like the commission, both groups of jurists thought that war-time violence stood better chances at being problematized than war as such. In their resulting efforts at problematization, moreover, both groups’ assumptions about the kind of problem that war was as well as about their own and others’ capacity for action against war relied on somewhat ambiguous understandings of a presumed “civilizational” hierarchy. Finally, the jurists debating in the aftermath of the Franco-German War also drew on ideas developed by an emerging social-scientific discipline – in this case, criminology – to conceptualize undue war-time violence as caused by social factors and as knowable through statistical data.

In other aspects, however, the legal debates which Chapter 4 studied clearly differed from the Balkan Commission’s problematization of war. For instance, like the Balkan Commission, the jurists debating the Franco-German War were familiar with the assumption that the intoxication of combat led to war’s reproduction – yet unlike the commissioners, they did not understand this intoxication as embedded within a wider dialectic in which war would potentially transcend itself.⁶ Moreover, while the Balkan Commission’s work might be seen as indicative of war’s becoming a this-worldly problem and an actionable object, the two legal debates analyzed in Chapter 4 show

⁵ Rolin-Jaequemyns, “De la Manière d’apprécier.”

⁶ Cf. Koskeniemi, *Gentle Civilizer*, 83. The only trace of a dialectical formulation of the problem of war in the primary sources I draw on here was Rolin-Jaequemyns’ suggestion that in war, “next to the scourge one finds the remedy [...]. The remedy consists in the reliable appeal which war makes to all the dormant faculties of a nation” (Rolin-Jaequemyns, “De la Manière,” 525). Yet even Rolin-Jaequemyns did not consistently believe that war could produce something positive: “la guerre, une chose mauvaise en soi ne pouvant produire que des résultats plus ou moins mauvais” (Rolin-Jaequemyns, *La guerre actuelle*, 30).

that the commissioners' "desacralization"⁷ of war was not yet taken for granted: for hovering on the margins of both debates, one could still find a notion of war as a fateful *malheur*. Lastly, there were notable differences between these initiatives' respective ways of knowing. While the Balkan Commission sought to produce sense-based knowledge of war that was "empirical" in roughly today's understanding of the term, to the jurists debating the Franco-German War, experiential insight into the external world needed to be coupled with introspection into their individual and collective consciences in order to become (potentially true) knowledge. Moreover, while the Balkan commissioners were very enthusiastic about the epistemological advantages of their contemporaneity to the wars they were studying, the jurists debating the Franco-German War saw in this kind of contemporaneity a major epistemological obstacle.

Furthermore, the jurists' discussions also brought into view additional aspects of the legal problem of war which the sources pertaining to the Balkan Commission did not discuss in as central a manner. First, this concerned the role of the state. While the jurists considering this matter in the aftermath of the Franco-German War imagined that sovereign states would take on a beneficial and in fact quite central role within the "international legal institution" that they envisaged for trying breaches of the laws of war, their colleagues congregating fifty years later saw sovereign states as a key part of the problem and hence strove to construct a more fully *international* tribunal. Secondly, the primary sources under study in Chapter 4 allowed for a far more detailed reconstruction of how war and certain of its violences were assumed to constitute legal problems and, more particularly, of what it took for them to be criminalized. On this question, the chapter showed that the idea that breaches of the laws of war constituted crimes required a notion of international relations as more than just private relations between states. Finally, the chapter traced how the jurists debating the Franco-German War, influenced by criminological research, understood war-time crimes to be addressable by governmental action – and how this

⁷ Kévonian, "L'enquête," 30.

conceptualization was positioned against the older idea of crime as a reasoned personal choice.

Pursuing these matters further, Chapter 5 inquired into the post-Second World War criminalization of war at the IMTFE in Tokyo. Through a close reading of three dissents issued against the majority judgment at the IMTFE, I traced different approaches to the criminalization of war, thus showing that criminalization, far from being a readily available tool for rendering war problematic, required construction and argumentation and was enabled by historical preconditions. Next, I looked at epistemological aspects of the Tokyo tribunal, focusing in particular on the three dissenting judges' criticisms of the majority's practices for drawing inferences. Lastly, I scrutinized the three dissenting judges' understandings of war and war-time violence as problematic, including their divergent assumptions about the nature of war's wrongness, their puzzlement about the extent to which war-time violence was rationally controllable and hence "civilized," and the differing temporal horizons in which they conceived of war and war-time violence as problematic.

The chapter not only examined the production of criminalization as an instrument for problematizing war, but also discussed several of this problematization's co-productive aspects. It showed, for instance, how different approaches to criminalization saw it as, respectively, an instrument for achieving international progress, an instrument for securing progress that had been achieved by other means, and an instrument that hindered progress. The chapter also demonstrated how the instrument of criminalization and the knowledge-production requirements that came with it produced war as a particular kind of problem for which individuals rather than states bore responsibility, and which was inherently wrong rather than a wrong by human decision. Moreover, the chapter explicated the ways in which different legal traditions and their respective theories of truth produced the judge as an epistemologically capable subject. Much like a correspondence theory of truth would have it, some of the judges in Tokyo considered themselves to be capacitated subjects of truth for being detached from the object of their knowledge. Others, however,

regarded themselves as enabled to knowledge for being experienced in finding truth in the overall constellation of pieces of evidence – much like a coherence theory of truth would assume. Adding to the insights that Chapter 3 afforded into the co-production of the Balkan Commission's practices and ways of knowing and its preferred formulations of the problem of war, Chapter 5 thus highlighted the co-productive interrelationships between various assumptions underlying such practices, ways, and formulations.

Finally, Chapter 5 added upon the previous chapters' findings regarding the constitutive exclusions of the problematization of war. For one, it showed that in addition to sidelining metaphysical systems of thought, emerging empirical ways of knowing war also worked to the exclusion of epistemologies that assumed for the attainability of truth to depend on the knowing subject's situatedness within historical and political contexts. Next, linking what in previous chapters might still have seemed like separate matters, Chapter 5 highlighted how the notion of a distinction between rational and irrational warfare, when coupled with ideas about modern and "civilized" violence, made some wars and some violences problematic while rendering others unproblematic – and how it thereby precluded the notion that all wars constitute a problem. Finally, the chapter raised the question of the complicity of the tribunal's ways of problematizing war with the problem of war itself. In this regard, while some of the Tokyo Tribunal's blindnesses were self-imposed and politically convenient ones⁸, the dissent of the Indian judge, Radhabinod Pal, also bespoke a blindness of a different kind. In effect, Pal argued that international law had contributed to bringing about the current international order by turning a blind eye to the violence of the colonial wars – and that the Tokyo Tribunal's capacity for problematizing war depended not least on its ability to ignore international law's

⁸ I here have in mind the way in which the charges in Tokyo were specified and applied so to ensure that the Allied powers would not be at risk of having their own conduct of the Second World War put on trial (cf. Varadaraja, "The trials of imperialism," 806). The same argument has also been made for the Nuremberg Tribunal (cf. Douglas, *Genocide on Trial*, 55). And it could also be made about the spirit in which Pal considered Japanese war crimes.

historical complicity in the kinds of crimes it was now judging. Yet as I also showed in the chapter, Pal was able to deliver this scathing critique only because he did not seek to devise a way out of the problematic conundrum it pointed to.

What, then, does it mean for these insights to constitute working materials for us in the present? To be clear, the historical materials offered by this thesis do not tell us about our contemporary present in a straightforward way. For instance, they do not imply that because rational formulations of the problem of war supplanted dialectical ones, resurrecting such dialectical formulations would be the solution to our woes, or that because empirical ways of knowing war superseded metaphysical systems of thought, a return to metaphysics would hold the answers to our questions. Rather, the materials offered by this thesis seek to invite a questioning of our contemporary ways of problematizing war, an inquiry into the limits of these ways, and a push against and, perhaps, a reconfiguration these limits. While this is an open invitation – you make of these materials what you will – I still want to offer a few questions which, depending on how we come to the problem of war, I believe these materials might raise for us.

If we come to the problem of war from an interest in transitional justice or also in international criminal law, then we might query, for instance, what the renewed criminalization of war currently underway (see Chapter 1) presupposes about war. What kind of wrong does this criminalization assume for war to be, and whom, if anyone, does it grant authority in determining that war is this kind of wrong? What assumptions about the international as an association – of states, of communities, of individuals, or of other entities – does it rely upon? What sort of international progress does this criminalization envision, and how does it hope to contribute to it? How does it see itself, and international law more generally, in relation to the problem that is war? Depending on the answers that we give to these questions, we might then wonder about the possibilities and limits which the present move towards criminalizing war entails for how we can imagine and work towards a future international – or, at some point, a present one – free from war.

In fact, the same question could be asked about the discipline of IR, too: how do our current frames for rendering war problematic enable, and how do they limit our imagination with regards to what a future free from war could look like and what we could do to work towards such a future? More generally, if we come to the problem of war from the discipline of IR, then the materials offered by this thesis' analysis suggest myriad questions. To start with, we might ponder what happens when we think of war-time violence as an act that can be either rational or irrational, and when we conceive of such violence and of war itself as a rationally structured problem of deviance from a behavioural norm. What other understandings of the problem of war do these rational formulations exclude and, hence, preclude from being taken seriously, or even more fundamentally from being thought, within the discipline?

To push the questioning of rational formulations of the problem of war even further, in how far are these formulations and those of our analyses of war that rely on them still shot through with assumptions about dichotomies of modern and non-modern, "civilized" and "uncivilized" violence? This is not only, but also a question of which wars we study at length, and which wars we devote far less attention to today. In this context, Bartelson has argued that once war had become "narrowly defined in interstate terms, whatever kind of violence that was inflicted on nonsovereign communities or uncivilized nations was not war properly understood."⁹ To this observation, we can now add that the exemplary historical efforts at rendering war problematic which this thesis studied did little to challenge this particular constitutive exclusion of what did and what did not count as "war proper." In fact, as judge Pal pointed out, efforts at problematizing war frequently reproduced this distinction. How, then, do our current attempts at problematizing war fare in this regard?

If we wanted to embroil ourselves in further details, we could also wonder about the productive role that our explanations of war and its violences play for how we can (and, by implication, cannot) know about these items and grasp them as problematic.

⁹ Bartelson, *War in International Thought*, 175.

Is there a sense, for instance, in which our empirical inquiries into the economic, social, psychological, and other causes and consequences of war continue to make war and its violences themselves unknowable and unwriteable? What was gained when war, gradually and haphazardly, became an object of analysis for the emergent empirical social sciences – and what, in turn, is lost when war is a fully-fledged research object of these sciences today?

The historical materials offered by this genealogy also raise questions about our ways and practices of knowing war. Most overtly, when we collect data, whether by “going there” or by looking at war from afar, when we think about these data, perhaps conjecturing by means of hypotheses, when we write about war, whether reports, policy briefs, journal articles, or PhD theses – what, in fact, are we doing? How do the practices through which we seek to know war bolster our ways of problematizing war? How do we produce ourselves as epistemologically capable subjects vis-à-vis war – and on what exclusions do these claims to epistemic authority in questions of war rest?

In this vein, we might also use the materials provided by this thesis to wonder about how our ways of problematizing war help constitute ourselves. Insofar as the assumption that the problem of war is foundational for the discipline of IR helps secure our scholarly and disciplinary sense of self, asking how exactly how war has been made an epistemic and actionable object has the potential to rupture this self-understanding of ours. Thereby, it might create an opening in which the work that this thesis proposes for us to undertake on our contemporary problematizations of war comes to seem all the more more urgent.

Besides raising a small plethora of questions about our contemporary problematizations of war, I also want to point to a constitutive exclusion of these contemporary problematizations which seems to me to be a particularly vexing one. In all of the examples which this thesis has studied, problematizations of war that were upheld and furthered by subjects implicated in these problematizations were supplanted by problematizations that assumed for the problematizing subjects to be positioned to the outside of the problem. When rationally structured formulations of

the problem of war replaced dialectically structured ones, when empirical ways of knowing war supplanted metaphysical and introspective ways, when commissioners and judges deemed themselves capable of dealing with war by virtue of being modern and “civilized” rather than seeing war as a problem of their modernity and “civilization” – in all of these instances, war became a problem to be known about and acted upon from the outside.

Today, in the discipline of IR as in the international politics of problematizing war, a similar structuring of the problem of war often seems to be at work. To be sure, the analogy is an indirect one: for the most part, we no longer base our structuring of the problem of war on ambiguous notions of a “civilizational” hierarchy¹⁰, and metaphysical systems of thought today do not compete with empirical ways of knowing in the same way in which they did roughly a century ago. However, as we theorize and measure, observe and describe, judge and run truth-seeking initiatives about war, we oftentimes tend to do so from a position located to the outside of the problem that we are seeking to deal with. Like the Balkan Commission, the jurists debating the Franco-German War, and the judges at the IMTFE, we render war and its violences problems of deviance which are diagnosable and corrigible from the outside. Indeed, our capacity for taking meaningful epistemological, ethical, and political action on the problem of war often relies on and reproduces our being external to this problem.

This particular limit of our contemporary problematizations of war is problematic for at least two reasons. On the one hand, the assumption that meaningful action towards war requires the acting subject to not be part of the problem of war denies a great number of people any real agency towards this problem. On the other hand, it also inhibits those of us who regard ourselves as capable of addressing war from inquiring into how we might be implicated in the problem that war constitutes. This poses a

¹⁰ Not least because as a purpose of progressive international politics, “civilization” has arguably by now been replaced by “human rights” (cf. Samuel Moyn, *The Last Utopia: Human Rights in History* (Harvard, MA: Harvard University Press, 2010), at 176ff.).

conundrum that is not easily resolved: if we take seriously this thesis' contention that many of our contemporary ways of problematizing war rely on our being external to the problem of war, then we lack the analytical means – the theories, the concepts, the practices – to grasp just how we might be part of the problem.

Take, for instance, just war theory. Zehfuss has argued that just war theory conceives of war as arriving “from what is imagined as the outside” and in consequence cannot begin to make sense of our responsibility for war.¹¹ Yet as the genealogy developed in this thesis suggests, this is not just about how we theorize war, but also about how we theorize ourselves. As the history of how we came to imagine war as arriving from the outside turns out to (also) be a history of how we came to imagine ourselves as being external to and *therefore* capable of addressing the problem of war, just war theory's inability to inquire into our responsibility for war might be even more difficult to alleviate than Zehfuss assumes.

However, I would wager that in this, just war theory is probably only but one particular example of a tendency characteristic of many of our IR frames of war. While a broader survey of IR's ways of problematizing war is beyond the scope of this thesis (though perhaps such a survey might be one of the next steps that should follow from it), I hope that the thesis has nonetheless brought forward an argument urging us to get to work on the concepts and practices through which we seek to know war, and that it has offered plentiful historical materials which we could use to commence this work. As but two particular points of departure for this future work, this thesis would suggest that we ought to seek out ways of knowing war that base themselves on and champion the knowing subject's situatedness within historical and political contexts (and hence, that try to come to terms with their historical complicity in the problem of war), as well as ways of knowing war that place themselves within the same temporal and spatial horizons as their object of study (and hence, that might make of war a trans-temporal or trans-spatial problem).

¹¹ Zehfuss, *War and Politics*, 3f.

To conclude this section, I want to offer a brief recapitulation of the contributions that this thesis' genealogy of the problem of makes to a number of literatures. First, to IR research which is already historically and/or critically interested in war as an object of thought and action, the thesis contributes not only by focusing on a period of time that has so far received relatively little analytical attention, but also by scrutinizing what this research often takes as its unspoken point of departure: namely, the assumption that war is problematic. While this thesis in fact shares this assumption, it argues that precisely to take seriously that war constitutes a problem, we ought to pay heed to the ways in which we render it thus. Subjecting these ways to an historical and critical examination can expose them as contingent and malleable and can thereby render them changeable. Thus, this thesis' genealogy of the problem of war in international politics contributes to the declared aim of this strand of literature to "[bring] war back," as Bartelson puts it, "within the scope of human volition and responsibility."¹²

However, whereas Ceadel, Bartelson, and Zehfuss have fixated their gazes on specific theoretical views of war, I have tackled this same task by taking a more open look at different understandings of war as well as at our forms, practices, and ways of knowing war – and I have hence arrived at a somewhat different conclusion. Whereas, for instance, Bartelson's history of the ontogenetic view of war ends with a call for us "as social scientists" to "come up with new ways of understanding the emergence of political order" that recognize, yet do not rely on this particular view of war¹³, this thesis concludes by urging us to reconsider our ways of making war actionable – an undertaking which may certainly include remaking our ways of understanding order-making, but which is equally certainly not limited to this point. Ultimately, my thesis thus carves out a different way of conducting historical and critical analyses of "war" in and for IR.

Moreover, the thesis also took inspiration from historical and social-theoretical research on the problematization of war and war-time violence. To these lines of

¹² Bartelson, *War in International Thought*, 3.

¹³ *Ibid.*, 201.

research, the thesis does not claim to have added new insights – rather, it has translated their advice into action and, or so I hope, provided the ground for engaging them in new kinds of conversations. On the one hand, social-theoretical works had suggested European modernity as the particular context in which the thesis would have to make sense of the problem of war. Drawing on Shilliam's conceptualization of the temporally and spatially delineated "European-modern condition,"¹⁴ I have pointed out the specific ways in which, in the examples under study, European modernity served as a position in time and space from which it became possible to know about and take action towards war, and how, in turn, this position was made possible by the exclusion of non-European and non-modern subjects from this capacity for meaningful and competent action.

On the other hand, with regards to engaging various literatures from within and beyond IR in renewed conversation about the problem of war, this thesis proposes that a focus on war's becoming problematic can provide a ground on which to hold an exchange between different disciplinary perspectives. Rather than a plea for interdisciplinary research on "war," this is a call for research to inquire into how different academic disciplines constitute themselves as being in charge of ameliorating the problem of war, and to question how these disciplinary purposes structure and limit our possibilities of thought and action. In this context, a focus on the problematization of war can, I want to suggest, provide an opening for conversations which are not structured around and hence confined by disciplinary boundaries and concerns.

Overall, this thesis' genealogy of the problem of war has argued that the ways in which war has been problematized curb our analytical and political imaginations. They delimit who can take action against the problem of war and how, and they circumscribe what ways towards a future free from war we can envision. At the same time, however, the genealogy developed in this thesis also provides us with materials

¹⁴ Shilliam, "Decolonising the Grounds."

that we can use to try and change this state of affairs. My hope is that insight into the multiple, contingent, and often accidental histories of our ways of problematizing war as well as into the co-productive relationships between these ways' different elements and into their constitutive exclusions will provoke us to no longer take for granted our contemporary problematizations of war, but to reflect on our present ways and to work towards making these ways otherwise.

Against methods: conceptualizing and practicing genealogy as critique

Taking to heart Foucault's quip that genealogy ought to work out itself in its acts of cognition¹⁵, in this thesis' second main line of inquiry, I pondered, undid, and redid genealogy as a way of doing research. To start off this work, the second main part of Chapter 1 examined the current state of genealogy in IR. It found that many recently published genealogical studies of international politics conceive of and practice genealogy as a method: in a two-step procedure, they first specify genealogy to then use it as a research instrument. Yet as this procedure makes of genealogy a tool to be wielded onto the world which is not itself a part of the world that it studies, it risks exempting genealogy's epistemic practices from the purview of the historical and critical insights they produce. In this, recent genealogical research in IR stands in contrast to a first generation of IR genealogies which, as exemplified by the works of James Der Derian and Jens Bartelson, had found conceptual and practical ways of reflexively bringing their own conduct within the scope of their histories and critiques. This contrast between early and more recent genealogical works in IR suggested the conception and practice of genealogy as method to constitute a second problem for the thesis to work on.

Chapter 2 began to set about the thus-defined task. In the chapter, I reported on and reflected upon what I suggested to think of as the different actions my thinking had taken *en route* to being.¹⁶ To conceive of and practice genealogy as part of the world

¹⁵ Cf. Foucault, "Nietzsche, Genealogy, History," 90.

¹⁶ Hawkesworth, "Contending Conceptions of Science and Politics."

that it studies, the chapter proposed genealogy as history/critique, problematization, and critical praxis. To this end, I first considered Foucauldian genealogy in contrast to Foucault's archaeologies and to Nietzsche's genealogies. Through this reading, I cultivated an appreciation of genealogy as a kind of history that, working with an at least dual research focus, studies historical processes of emergence, and moreover as a kind of critique that, working with a considerable amount of primary sources, inquires into the becoming of our contemporary ways of being, knowing, and doing in order to render these ways changeable. I highlighted that genealogy as history/critique is as principally contingent and practically in flux as the objects that it studies. Finally, I argued that genealogy as history/critique can show not only *that* what we take for granted has a history, but also *how* it is historical – and that these insights into the historical processes of becoming of our present ways constitute working materials that can crucially enable a critique of our present conditions.

Secondly, I discussed the concepts through which I developed the genealogy proposed in this thesis as a thus understood history/critique. Most centrally, I drew on Koopman's reading of Foucault to suggest the notion of "problematization" to refer to the processual, multiple, and dispersed becoming of a problem – and thereby both to genealogy's research objects and to genealogy itself.¹⁷ As problematization, genealogy seeks to render existing problems further problematic, and it thus attempts to make itself part of the processes that it studies. In this way, the concept of problematization can serve to reflexively insert genealogy into the histories and critiques it pursues. In addition, I also discussed a number of further key concepts – including those of "practice," "co-production," and "critical praxis" – which simultaneously arose from the interplay between primary sources, secondary literatures, and problems to be worked on and informed my research of this interplay.

Thirdly, I explained how the genealogy developed in this thesis would attempt to realize a critical praxis. I discussed the key decisions that I took in the course of

¹⁷ Foucault, *Fearless Speech*; Koopman, *Genealogy as Critique*.

developing my historical analysis, including decisions about the historical period and the empirical examples to focus on, the kinds of primary sources to use, and my approach to and practices for collecting and analyzing these sources. I also previewed how, in the chapters to follow, I was going to use the historical analyses to experiment with my own knowledge practices so to conduct genealogy as, in Foucault's words, "a historico-practical test of the limits we may go beyond, and thus a work carried out by ourselves upon ourselves."¹⁸

In the following three chapters, I got to work not only on the primary sources I had gathered from various archives, but also on some of my own knowledge practices. The particular practice of thinking on which I focused in Chapter 3 – the formulation of working hypotheses – was one which had played a central role in my prior studies. By contrast, the epistemic practices with which I experimented in Chapters 4 and 5 – practices of writing and practices of looking – were suggested by the historical analysis presented in Chapter 3. To further contemplate and explicate these experimentations, each of the three historical chapters was followed by a brief reflective vignette.

There are a number of points which all of these practical experimentations shared in common. First, they all highlighted that knowledge practices are political insofar as they help produce particular realities. For instance, I argued that many of our most common practices of thinking, writing, and looking produce us as knowledgeable subjects who are distinct and distanced from the objects of our knowledge. Secondly, I suggested that insofar as knowledge practices are historical, they are in fact also changeable. Therefore, the outcome of our genealogical work does not need not be, *pace* Hamilton, that we passively "accept [...] that this moment will change."¹⁹ Rather, if we find fault with our practices and the realities they help produce, then we can use the materials provided by genealogy to try and change these practices and these realities. Thirdly, my experimentation with knowledge practices attempted such a genealogically informed change of practice. Against hypotheses that put into practice

¹⁸ Foucault, "What is Enlightenment?," 47.

¹⁹ Hamilton, "Genealogy of Metatheory," 161.

the Cartesian split between the subject and the object of knowledge, against analytical storylines that suggest an omniscient scientific narrator describing “a reality that lies outside them,”²⁰ and against an observant gaze that depends on the possibility of a stable and secure perspective, I attempted to hone practices of thinking, of writing, and of looking that would not likewise reproduce me as a knowledgeable subject located in a stable position to the outside of the problems I study. Overall, by bringing thought to bear on itself *in practice*, the experimentations and the reflective vignettes were meant to extend an invitation: to question the practices through which we seek knowledge of the world, and to try and change these practices so that they become conscious of their being a part of this world. This, then, is what the genealogy of the problem of war proposed by this thesis did to our conception and practice of genealogy: it undid genealogy as method, and it remade genealogy into history/critique, problematization, and critical praxis.

This conception and praxis of genealogy, I argue, brings genealogy’s epistemic practices within the scope of its historical and critical insights. While I do not mean to imply for the conduct of genealogy that I have pursued in this thesis to constitute the only way in which this could be achieved, I want to maintain that this genealogical conduct has constituted an ongoing and open process which conceived of itself as part of the processes that it studied, and which to this end laid open its procedures and examined their contingencies, limits, and blind spots. Against the tendency of genealogy as method to situate its own epistemic practices beyond the purview of critique, the genealogy I developed in this thesis thus actively sought to insert itself into the histories, the politics, and the world that it analyzes.

Notably, this thesis did all this to our conception and practice of genealogy through an inquiry into war’s becoming an object of knowledge and action. It was for this reason that I proposed the concept of “problematization”: for it allowed me to avoid, as Chapter 2 pointed out, basing my analysis on an ontology of war and violence,

²⁰ Law, *After Method*, 12.

forces and struggles. Moreover, following up on the argument that a genealogy of the historical emergence of our contemporary problems can offer us empirical materials for getting to work on these problems, I went to work on one the limits of the contemporary problematization of war. As my historical analyses showed the manifold ways in which commissioners and judges were epistemically and ethically capable subjects by virtue of being situated outside of the problem of war, in my genealogical practice I sought out ways of knowing which would, even if provisionally and perhaps never entirely successfully, draw the knowing subject back within the problems they were studying. In sum, then, in my work on genealogy, I not only tried to undo it as method and redo it as history/critique, problematization, and critical praxis, but I also attempted to practically respond to one of the problems raised by the genealogical analysis that was the project's other main line of inquiry.

Through this work on genealogy, the thesis seeks to partake in emergent IR discussions about the political life and critical potential of methods. Instead of treating methods as given, innocent, or ready-made tools to be wielded onto the world in the pursuit of knowledge, authors writing from perspectives such as pragmatism, critical security studies, and assemblage thinking have proposed different ways of rendering visible and workable methods as part of the world that we seek knowledge of. Yet while these proposals all mention "historical contingency" as one of the ways in which methods form part of the world, few of them have pursued this matter further. Moreover, though the general argument about reflexivity as a kind of critique is a familiar one²¹, existing proposals for a critical take on methods in IR seem to so far have given only a partial consideration to the critical leverage that a reflexive "turning back" of knowledge onto itself might provide. While pragmatism has formulated reflexivity as a marker of distinction elevating (social) scientific knowledge claims above those made by other ways of knowing, assemblage thinking and critical security studies have not yet put forth an anti-hierarchical alternative to this stance on reflexivity. In light of this state of discussion, my thesis contributes to IR's

²¹ Cf. Amoureux, Steele, "Introduction."

understanding of methods and critique in two ways: by putting forth history and reflexivity as additional aspects of the politicality and criticality of methods, and by developing a genealogical analysis that exemplifies what a historical and reflexive take on methods and critique could come to in practice.

In Chapter 2, I promised to sketch, in the thesis' conclusion, a few lines of conversation which might be pursued between the genealogical approach to critical methods developed in this thesis and the perspectives offered by pragmatism, critical security studies, and assemblage thinking. Between pragmatism and genealogy, one particularly necessary exchange would center on the viability of assuming (social) science as a privileged way of knowing. Pointing out the historicity of *all* ways of knowing, genealogy argues against attributing a principal epistemological advantage to any such way in particular. Therefore, unlike pragmatism's double or triple hermeneutics, genealogy turns knowledge back on itself not in order to lift itself above other ways of knowing, but rather uses its historical insights to practically work on itself and its own limitations. Meanwhile, a conversation between critical security studies, assemblage thinking, and genealogy could attend to the differing meta-theoretical emphases that these approaches espouse. Whereas critical security studies and assemblage thinking involve assumptions about the emergent, generative, and entangled ontology of the social and material world, genealogy as practiced in this thesis tries to avoid basing itself on ontological suppositions.²² What implications do their respective emphases on ontology and epistemology have for the critique of methods that these different approaches aspire to, for instance for their ethos and critical praxis?

While a comprehensive answer to this question is beyond the scope of this thesis, the question points to another, more general topic of conversation between pragmatism, critical security studies, assemblage thinking, and genealogy: insofar as these approaches offer different ways of rendering supposedly "ready-made" methods part

²² In this, it actually finds itself in broad agreement with pragmatism (cf. Friedrichs, Kratochwil, "On Acting and Knowing," 705).

of the world, where exactly do their respective moves for doing so assume for the political quality and critical potential of methods to lie? Pragmatism's politics of methods is a pluralist one²³: appraising "science as a social activity,"²⁴ pragmatism supports an ideal of "research as the consensus-oriented practice of discursive communities"²⁵ whose "purpose" lies in the production of knowledge "to enable orientation in the social world."²⁶ In turn, the critical potential of pragmatist methods such as abduction consists in their enabling of prudent judgment. Instead of succumbing to "radical doubt" (an endeavour that is, for pragmatism, of an "unproductive nature"²⁷), a pragmatist "scientific practice" retains a scholar's capacity for critical judgment and strives to amount to a "quasi-judicial procedure."²⁸

For critical security studies as well as for assemblage thinking, matters stand rather differently. Aradau and Huysmans, for instance, "emphasize the effects methods have"²⁹: they understand methods as entangled in conflictual relations of power, as involved in the making and breaking of worlds, and as rendering some worlds more visible and others less so. On this view of the politics of methods, "the question of methods necessarily is a question of conflicting, competing, diverse 'conceptions' of worlds."³⁰ Therefore, methods' critical potentiality comes to depend on our ability to recognize, judge, and practically interrupt their world-making effects. An example of this is provided by assemblage thinking, which takes issue with and seeks to interrupt how standard IR methods help to stabilize an anthropocentrist order of things. Instead, by enacting methods as assemblages, it makes them part of a "set of life-worlds in which agency circulates between humans and non-humans"³¹ and thereby

²³ Hawkesworth, "Contending Conceptions of Science and Politics," 43ff.

²⁴ Friedrichs, Kratochwil, "On Acting and Knowing," 712.

²⁵ *Ibid.*, 711.

²⁶ *Ibid.*, 706.

²⁷ *Ibid.*, 711.

²⁸ *Ibid.*, 712.

²⁹ Aradau, Huysmans, "Critical methods in IR," 605.

³⁰ *Ibid.*, 607.

³¹ Lisle, "Energizing," 68.

“[politicizes] how things and people are entangled.”³²

For genealogy, the politicality of methods and their critical potential lie yet elsewhere. Casting methods in a historical light, genealogy emphasizes how their contingent historical emergence enables and constrains our contemporary ways and practices of knowing. This genealogical view of the politics of methods is clearly at variance with the pragmatist notion of method as a collective decision based on a principle of consensus. It is somewhat more aligned with the conflictual understanding of politics espoused by critical security studies’ take on methods – yet it avoids making this a claim about the nature of politics. Moreover, genealogy focuses not (only) on methods’ world-making effects, but also considers ways and practices of knowing as part of co-productive relationships. From this follows an understanding of critique that is both interruptive and (re-)constructive: analyzing the historical emergence of our contemporary ways and practices of knowing, genealogy disturbs the assumption that these ways and practices were given tools, and it provides us with empirical materials to get to work on our ways, our practices, and our selves. Unlike pragmatism, a genealogical take on methods and critique thus calls into question our capacity for judgment and embraces rather than shuns doubt. Unlike critical security studies and assemblage thinking, genealogy experiments not with the ways in which methods are assembled with other elements of our analyses, but with the practices of which methods are comprised. In this way, it not only interrupts our own practices and ways of knowing (and thereby the subjects, objects, and worlds that these help produce), but also begins the work of critically remaking these practices and ways.

A sense of curiosity

Genealogy, for Foucault, was “a process of making [something] intelligible but with the clear understanding that this does not function according to any principle of

³² *Ibid.*, 69.

closure.”³³ By necessity as by design, then, there is a sense in which a genealogical project can have no conclusion, neither logically nor narratively. Genealogy poses more questions than it answers. It opens up new vistas, lines of thought, and ways of action. It renders thinkable what was previously unthinkable, questionable what was previously unquestionable, and it makes existing problems more problematic.

Perhaps more than anything else, therefore, what I hope the reader might take away from this thesis is a renewed sense of curiosity. The thesis has tried to do several things at once. Most overtly, it has conducted an historical and critical inquiry into the problem of war as well as carried out an examination of and experimentation with genealogy. Perhaps somewhat less conspicuously, however, the thesis has also been an attempt at wondering about and subverting a will to knowledge. It has been a process of becoming of curious and of sustaining an evolving and ever-questioning curiosity. Here and there throughout the thesis, I have tried to render this process visible, to convey a sense of its joys and elations and of its difficulties and frustrations. Whatever the will to knowledge with which you arrived to the thesis – a preoccupation with the problem of war, perhaps, or a concern with genealogy or with critical methods more generally, or maybe an interest in international politics or in the discipline of IR – I hope that the thesis has affected this will in some way, and that it may have begun to instill in it a new kind of curiosity.

“[W]hat is philosophy today,” Foucault once asked, “if it is not the critical work that thought brings to bear on itself? In what does it consist, if not in the endeavour to know how and to what extent it might be possible to think differently, instead of legitimating what is already known?”³⁴ I do not think of this thesis as a piece of philosophy, but otherwise, Foucault’s rhetorical question captures the thesis’ spirit very well. Indeed, the thesis’ genealogy of the problem of war in international politics has been an endeavour to become curious about our possibilities for thinking and doing differently. In this sense, what I first and foremost hope for the thesis to have achieved

³³ Foucault, “What is Critique?,” 64.

³⁴ Foucault, *The Use of Pleasure*, 8f.

is to have conveyed a sense of the difficult, urgent, and productive work on our practices, our ways, and our selves that is required if we want to critically question our contemporary problematizations, including our problematizations of war.

Epilogue

Growing up in West Germany in the 1980s and 1990s, war was a distant problem. It was what, an incredibly long time ago, had caused the scar on my grandfather's thigh. It was why once, when I was still in kindergarten, all the carnival processions were cancelled. Later, when I was in primary school, it was what brought refugees to our town. It was on television sometimes, just before the show that my friends and I all watched on Saturday evenings. Later still, and rather suddenly, it was also something that the German army participated in again. But it was nonetheless far away.

A year and a half before the very hot summer day on which I tried to prove my ability to study political science, my friends and I protested against the imminent invasion of Iraq. Our protests did not stop the US-led "Coalition of the Willing." And yet, joining the anti-war march in our small hometown made us, for the first time, participants in the international politics of problematizing war.

When I was sitting the exam to show that I was *studierfähig*, I did not know that there was, in Germany at least, a sub-discipline of political science called International Relations, nor that this (sub-) discipline preoccupied itself with the study of war. But I passed the exam, went on to study politics, and specialized in IR. I graduated with a master's in peace and conflict studies and worked in applied peace research for a while. My colleagues and I conducted fieldwork in post-independence South Sudan: interviewed people, collected other data, drew conclusions, and wrote a report.¹ Then, I decided to pursue a PhD.

Now, quite a few years later, the war in Iraq is still (or again) ongoing; to it, other wars have been added. Meanwhile, the debate in Germany is about weapons exports to Saudi-Arabia and about whether German troops should be sent to Syria. Curiously

¹ Elke Grawert, Christine Andrä, *Oil Investment and Conflict in Upper Nile State, South Sudan* (Bonn, Germany: BICC, 2013).

enough, I am finding myself back in Tübingen these days. It is all very familiar, yet at the same time, it is strange. For here I am, wondering where the thesis leaves me.

Acknowledgements

This thesis has been a rather incredible journey. It took me to places near and far and it sent my mind on wanderings that I could never have imagined before. And though a thesis is said to be a kind of solo travel, in truth I was never travelling on my own.

I am immeasurably grateful to my supervisors, Berit Bliesemann de Guevara and Milja Kurki. No matter how long and winding the road and how many dead-ends I hit upon, Milja and Berit always had my back. Thank you for your faith in and enthusiasm for this project, for providing so much clarity, reassurance, and cheerful and critical commentary throughout the years, and for making me a happier thinker and writer.

Had it not been for Donatella della Porta and Chris Reus-Smit, this thesis would never have seen the light of day. I learned so much from them – about research, integrity, and decency – and I am immensely grateful for their confidence in me and for their support in getting this project off the ground.

As an academic home for the past four years, Aberystwyth University's Department of International Politics has been a fantastic environment. It is an exceptional place for undertaking doctoral research and I would like to thank everyone who contributes to making it thus. During crucial moments of the research, I also had the very good fortune of being a visiting fellow at American University's School of International Service and at the University of Tübingen's Institute of Political Science. I would like to thank Patrick Thaddeus Jackson, whose helpfulness and enthusiasm for the project made possible my stay in DC, and Andreas Hasenclever, who offered me the perfect working conditions during the final and most intense months of thesis-writing. I am also grateful to Aberystwyth University for awarding me a Doctoral Career Development Scholarship, to the German-American Fulbright Commission for sponsoring me as a Fulbright Visiting Researcher, and to the University of Tübingen for granting me a Teach@Tübingen Research Fellowship.

For plenty of advice, encouragement, and reading recommendations, I am indebted to Roberta Basic, Berber Bevernage, Christian Bueger, Haris Efstathopoulos, Gunther Hellmann, Jef Huysmans, Hara Kouki, Hidemi Suganami, Andrea Warnecke, and Dvora Yanow. I would also like to thank the participants of the EISA Young Researchers Workshop “Knowing What and How” who generously gave their time to comment upon a rather overfraught paper. Likewise, I am indebted to the audience of the International Politics Research Seminar in Aberystwyth as well as to the members of two colloquia in DC and Tübingen who offered pertinent comments on my project. Last but not least, I owe a special thank you to Stefano Guzzini who, very many years ago, was the first to encourage me to pursue a PhD, and whose support and mentorship ever since have made a difference countless times.

My research was greatly helped by staff at different libraries and archives. I am particularly thankful to Jacques Oberson at the United Nations Archive in Geneva, Fabrizio Bensi at the archives of the International Committee of the Red Cross, and Jen Comins at Columbia University’s Rare Book and Manuscript Library. I would also like to thank the staff of the National Library of Wales for making the LLGC such a wonderful working environment.

The past few years would not have been the same without the friends who doubled as my travel companions. I am especially grateful for the three other *merched* who set out on this PhD journey with me. Katarina Kušić always knew when to push me and when to tell me to take a rest and made sure that no matter how far I travelled, I would have a home to come back to in Aberystwyth. Dani House was a fabulous partner in crime in our research group and many other adventures and perhaps the sole reason I never came down with a severe case of culture shock. Mary Keogh let me benefit from her incredible sense of humour and never ceased to put things in perspective. I would also like to thank all those friends who made Aber such a beautifully familial place, especially Lydia Cole, Anna Danielsson, Flo Edelmann, Johannes Gunesch, Prithvi Hirani, Kat Hone, Sorana Jude, Nick Morgan, Flavia Occhibove, Matt Rees, Lorena de Vita, Danielle Young, and my office mates Karijn van den Berg and Alistair Markland.

I am forever indebted to Desirée Poets for providing shelter when it was most needed. Finally, to *Team Aber*, Berit, Dani, and Lydia, thank you for distracting me from the thesis in the very best of ways – it’s been a pleasure!

My stay in DC fell into troubled times, yet on a personal level was paradoxically pleasant. Without a doubt, this was due to the friends who braved the tide of times with me: Francesca Vantaggiato, Patrice Wangen, Aida Roige, Piotr Szyja, Lela Chakhaia, as well as Maria Silva Porto and Georg Schmid.

For their friendship and solidarity carrying me through a particularly rough patch, I am very grateful to many people, but in particular to Steffi Lämmert, Esther Wahlen, Matthijs Kuipers, and Margot Beal. *Grazie mille* to Marijn van der Sluis for helping me put up a fight and win it. Finally, a great big thank you to Andrea Warnecke for offering far more common sense over the years than I should have needed.

My research directly benefitted from more than a little help from my friends, too. My archival research was made a lot better by Mariam Munang and Marcin Pawlowski, whose hospitality was second to none, as well as by Matthias Dilling, who spared me at least a few archival anxieties. I am also grateful to have had the opportunity to participate in the “IR/International History” seminar series, organized by Thomas Bottelier and Filippo Costa Buranelli. Felix Anderl offered generous comments and a crucial bit of data. During the final few months of writing, two long-distance writing companions, Pietro Intropi and Patrice Wangen, pushed me to keep going – while my colleagues in Tübingen, especially Miriam Keppner, Joldon Kutmanaliev, and Maike Messerschmidt, made the going a lot nicer. And Katarina Kušić did the final bit and submitted the thesis on my behalf. Thank you!

Then, there were the friends from times before or anyways outside the PhD who bore with me as the thesis dragged on and who never ceased to remind me that the best journeys are still to be had outside of one’s research. Many good times were had at Signe and Anne’s respective kitchen tables, and a few sections got written there, too. Vera visited me anywhere I moved and even hiked to Aberystwyth once. Flo was a

constant source of optimism. Philine had sympathy for the challenges of a PhD student even when her own challenges were far greater. Lena and Tine provided reliable way stations. Hanging out with Adriana, Steffi, Anja, and Hannah reminded me of where I come from. Elisa shared all of my joys and understood all of my woes. And Andi made sure that a decade after moving away I would settle into Tübingen in an instant. Finally, I want to express my gratitude to my family: to my parents, who never ceased to believe in me as I tested their patience with a PhD process that must have seemed an endless mystery to them, to my brother, who tried to illuminate this process for them, and to my godaunt Isa, who attempted to follow a PhD journey so different from her own. Last but not least, I am deeply grateful to Christian, who was there from start to finish and who made sure that in all of my travels, I would not lose myself.

Bibliography

Archives

Carnegie Endowment for International Peace, New York and Washington Offices Records, 1910-1954 (Columbia University, Rare Book and Manuscript Library Collection).

Carnegie Endowment for International Peace European Center Records, 1911-1940 (Columbia University, Rare Book and Manuscript Library Collection).

Archive of the League of Nations Secretariat, 1919-1946 (United Nations Office at Geneva (UNOG) Archive).

Legal texts

Hague Convention of 1899.

Hague Convention of 1907.

Statute of the International Criminal Tribunal for Rwanda.

Updated Statute of the International Criminal Tribunal for the Former Yugoslavia.

Published works

Aalberts, Tanja, and Golder, Ben, "On the Uses of Foucault for International Law," *Leiden Journal of International Law* 25, no. 3 (2012), 603-608.

Academie française, *Dictionnaire de l'Academie française* (Paris, France: Hachette, 1932).

Acuto, Michele, and Curtis, Simon, "Assemblage Thinking and International Relations," in Acuto, Michele, and Curtis, Simon (eds.), *Reassembling International Theory: Assemblage Thinking and International Relations* (Basingstoke, UK: Palgrave, 2014), 1-15.

Adler, Emmanuel, and Pouliot, Vincent (eds.), *International Practices* (Cambridge, UK: Cambridge University Press, 2011).

Advisory Committee of Jurists, *Procès-Verbaux of the Proceedings of the Committee, June 16th-July 24th 1920, with Annexes* (The Hague, The Netherlands: Van Langenhuisen, 1920)

Ainley, Kirsten, Friedman, Rebekka, and Mahony, Chris, "Transitional Justice in Sierra Leone: Theory, History and Evaluation," in: Ainley, Kirsten, Friedman, Rebekka, and Mahony, Chris (eds.), *Evaluating Transitional Justice: Accountability and Peacebuilding in Post-Conflict Sierra Leone* (Basingstoke, UK: Palgrave Macmillan, 2015), 1-18.

Alker, Hayward, *Rediscoveries and Reformulations: Humanistic Methodologies for International Studies* (Cambridge, UK: Cambridge University Press, 1996).

Allan, Bentley, "From Subjects to Objects: Knowledge in International Relations Theory," *European Journal of International Relations* 24, no. 4 (2018), 841-864.

Akhund, Nadine, "The Two Carnegie reports: From the Balkan Expedition of 1913 to the Albanian Tip of 1921," *Balkanologie: Revue d'études pluridisciplinaires* 14, no. 1-2 (2012).

Amoore, Louise, "Data Derivatives: On the Emergence of a Security Risk Calculus for Our Times," *Theory, Culture & Society* 28, no. 6 (2011), 24-43.

Amoore, Louise, "Foucault Against the Grain," *International Political Sociology* 2, no. 3 (2008), 274-276.

Amoureux, Jack L., and Steele, Brent J., "Introduction," in Amoureux, Jack L., and Steele, Brent J. (eds.), *Reflexivity and International Relations: Positionality, critique, and practice* (London, UK: Routledge, 2016), 1-20.

Anghie, Antony, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, UK: Cambridge University Press, 2004).

Aradau, Claudia, Huysmans, Jef, "Critical methods in International Relations: The politics of techniques, devices and acts," *European Journal of International Relations* 20, no. 3 (2013), 596-619.

Aradau, Claudia, Huysmans, Jef, Neal, Andrew, and Voelkner, Nadine, "Introducing critical security methods," in Aradau, Claudia, Huysmans, Jef, Neal, Andrew, and Voelkner, Nadine (eds.), *Critical Security Methods: New frameworks for analysis* (London, UK: Routledge, 2013), 1-22.

Aradau, Claudia, and van Munster, Rens, *Politics of Catastrophe: Genealogies of the Unknown* (London, UK: Routledge, 2011).

Arthur, Paige, "How 'Transitions' Reshaped Human Rights: A Conceptual History of Transitional Justice," *Human Rights Quarterly* 31, no. 2 (2009), 321-367.

Ashley, Richard K., "Living on Border Lines: Man, Postructuralism, and War," in Der Derian, James, and Shapiro, Michael (eds.), *International/Intertextual Relations* (New York, NY: Lexington Books, 1989), 259-321.

Ashley, Richard K., and Walker, R. B. J., "Conclusion: Reading Dissidence/Writing the Discipline: Crisis and the Question of Sovereignty in International Studies," *International Studies Quarterly* 34, no. 3 (1990), 367-416.

Ashworth, Lucian M., *A History of International Thought: From the origins of the modern state to academic international relations* (London, UK: Routledge, 2013).

Ashworth, Lucian M., "Where are the idealists in interwar International Relations?," *Review of International Studies* 32, no. 2 (2006), 291-308.

Balibar, Etienne, "What's in a War? (Politics as War, War as Politics)," *Ratio Juris* 21, no. 3 (2008), 365-386.

Barkawi, Tarak, and Brighton, Shane, "Powers of War: Fighting, Knowledge, and Critique," *International Political Sociology* 5, no. 2 (2011), 126-143.

Barnes, Barry, *Scientific Knowledge and Sociological Theory* (London, UK: Routledge and Paul Kegan, 1974).

Bartelson, Jens, *War and International Thought* (Cambridge, UK: Cambridge University Press, 2017).

Bartelson, Jens, *Genealogy of Sovereignty* (Cambridge, UK: Cambridge University Press, 1995).

Barthes, Roland, *Image – Music – Text* (New York, NY: Hill and Wang, 1977).

Bassiouni, M. Cherif, "Searching for Peace and Achieving Justice: The Need for Accountability," *Law and Contemporary Problems* 59, no. 4, 9-28.

Baylis, John, Smith, Steve, and Owens, Patricia, "Introduction: from international politics to world politics," in Baylis, John, Smith, Steve, and Owens, Patricia (eds.), *The Globalization of World Politics: An Introduction to International Relations*, 6th ed. (Oxford, UK: Oxford University Press, 2014), 1-14.

Beirne, Peirs, "Adolphe Quetelet and the Origins of Positivist Criminology," *American Journal of Sociology* 92, no. 5 (1987), 1140-1169.

Bell, Christine, "Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field,'" *International Journal of Transitional Justice* 3, no. 1 (2009), 5-27.

Bell, Duncan, "Before the democratic peace: Racial utopianism, empire and the abolition of war," *European Journal of International Relations* 20, no. 3 (2014), 647-670.

Bell, Duncan, "Writing the World: Disciplinary History and Beyond," *International Affairs* 85, no. 1 (2009), 3-22.

Bellamy, Alex J., *Just Wars: From Cicero to Iraq* (Cambridge, UK: Polity Press, 2006).

Ben-Josef Hirsch, Michal, "Ideational Change and the Norm of Truth and Reconciliation Commissions," *European Journal of International Relations* 20, no. 3 (2014), 810-833.

Ben-Josef Hirsch, Michal, *And the Truth Shall Make You Free: The International Norm of Truth and Reconciliation Commissions* (Ph.D. dissertation, Massachusetts Institute of Technology, June 2009).

Berenskoetter, Felix, "Approaches to Concept Analysis," *Millennium: Journal of International Studies* 45, no. 2 (2017), 151-173.

Berger, John, *Ways of Seeing* (London, UK: Penguin, 2008 [1972]).

Bernard, Henri, "Dissenting Judgment of the member from France," in Röling, B. V. A., Rüter, C. F. (eds.), *The Tokyo Judgment: The International Military Tribunal for the Far*

East (I.M.T.F.E.), 29 April 1946-12 November 1948, Vol. I (Amsterdam, The Netherlands: APA University Press Amsterdam, 1977), 481-496.

Bevernage, Berber, *History, Memory, and State-Sponsored Violence: Time and Justice* (Abingdon, UK: Routledge, 2012).

Bevernage, Berber, "Writing the Past Out of the Present: History and the Politics of Time in Transitional Justice," *History Workshop Journal* 69, no. 1 (2010), 111-131.

Bezirgan, Bengi, *Reframing the Armenian Question in Turkey: News Discourses and Narratives of the Past and Present* (Ph.D. dissertation, London School of Economics, 2015).

Bianco, Giuseppe, "The Misadventures of the 'Problem' in 'Philosophy,'" *Angelaki: Journal of Theoretical Humanities* 23, no. 2 (2018), 8-30.

Bisset, Alison, *Truth Commissions and Criminal Courts* (Cambridge, UK: Cambridge University Press, 2012).

Black, Henry Campbell, *Black's Law Dictionary*, 3rd ed. (St. Paul, MN: West Publishing, 1933).

Bleiker, Roland, "Pluralist Methods for Global Visual Politics," *Millennium: Journal of International Studies* 43, no. 3 (2015), 872-890.

Bliesemann de Guevara, Berit (ed.), *Myth and Narrative in International Politics: Interpretive Approaches to the Study of IR* (Basingstoke, UK: Palgrave Macmillan, 2016).

Bloor, David, *Knowledge and Social Imagery* (London, UK: Routledge and Paul Kegan, 1973).

Bloxham, Donald, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory* (Oxford, UK: Oxford University Press, 2001).

Bonditti, Philippe, Neal, Andrew, Opitz, Sven, and Zebrowski, Chris, "Genealogy," in Aradau, Claudia, Huysmans, Jef, Neal, Andrew, and Voelkner, Nadine (eds.), *Critical Security Methods: New Frameworks for Analysis* (London, UK: Routledge, 2015), 159-188.

Booth, Ken, Erskine, Toni, "Introduction: The Argumentative Discipline," in Booth, Ken, Erskine, Toni (eds.), *International Relations Theory Today* (Cambridge, UK: Polity Press, 2nd ed., 2016), 1-19.

Borg, Stefan, "Genealogy as Critique in International Relations: Beyond the Hermeneutics of Baseless Suspicion," *Journal of International Political Theory* 14, no. 1, 41-59.

Boswell, Rosabelle, "Can Justice Be Achieved for Slave Descendents in Mauritius?," *International Journal of Law, Crime and Justice* 42, no. 2 (2014), 146-161.

Bourdieu, Pierre, *The Logic of Practice* (Cambridge, UK: Polity Press, 1980).

Bousquet, Antoine, "The Concept of War in World Politics," in Berenskoetter, Felix (ed.), *Concepts in World Politics* (London, UK: SAGE, 2016), 91-106.

Bousquet, Antoine, *The Scientific Way of Warfare: Order and Chaos on the Battlefield of Modernity* (Oxford, UK: Oxford University Press, 2010).

Brahm, Eric, "Uncovering the Truth: Examining Truth Commission Success and Impact," *International Studies Perspectives* 8, no. 1, 16-35.

Bueger, Christian, "Making Things Known: Epistemic Practices, the United Nations, and the Translation of Piracy," *International Political Sociology* 9, no. 1 (2015), 1-18.

Bueger, Christian, "Thinking Assemblages Methodologically: Some Rules of Thumb," in Acuto, Michele, and Curtis Simon, (eds.), *Assemblage Thinking and International Relations* (Basingstoke, UK: Palgrave, 2014), 58-66.

Bueger, Christian, and Gadinger, Frank, *International Practice Theory: New Approaches* (Basingstoke, UK: Palgrave Macmillan, 2014).

Burchell, Graham, Gordon, Colin, Miller, Peter (eds.), *The Foucault Effect: Studies in Governmentality* (Chicago, IL: University of Chicago Press, 1991).

Burdick, William L., *The Law of Crime* (Albany, NY: M. Bender&Co., 1946).

Butler, Judith, *Frames of War: When Is Life Grievable?* 3rd paperback ed. (London, UK: Verso, 2016 [2001]).

Butler, Judith, "What is Critique? An Essay on Foucault's Virtue," in Ingram, David (ed.), *The Political: Readings in Continental Philosophy* (London, UK: Basil Blackwell, 2002), 212-227.

Buzan, Barry, and Lawson, George, *The Global Transformation: History, Modernity, and the Making of International Relations* (Cambridge, UK: Cambridge University Press, 2015).

Campbell, David, Dillon, Michael (eds.), *The Political Subject of Violence* (Manchester, UK: Manchester University Press, 1993).

Campbell, Kirsten, "The Gender of Transitional Justice: Law, Sexual Violence, and the International Criminal Tribunal for the Former Yugoslavia," *International Journal of Transitional Justice* 1, no. 3 (2007), 411-432.

Carnegie Endowment for International Peace, *Report of the International Commission to Inquire into the Causes and Conduct of the Balkan Wars* (Washington, DC: Carnegie Endowment for International Peace, 1914).

de Carvalho, Benjamin, Leira, Halvard, and Hobson, John M., "The Big Bangs of IR: The Myths That Your Teachers Still Tell You about 1648 and 1919," *Millennium: Journal of International Studies* 39, no. 3 (2011), 735-758.

c.a.s.e. collective, "Critical Approaches to Security in Europe: A Networked Manifesto," *Security Dialogue* 37, no. 4 (2006), 443-487.

Cassese, Antonio, and Röling, Bernhard V. A. *The Tokyo Trial and beyond: Reflections of a peacemonger* (Cambridge, UK: Polity Press, 1993).

Ceadel, Martin, *The Origins of War Prevention: The British Peace Movement and International Relations, 1730-1854* (Oxford, UK: Oxford University Press, 1996).

Chapman, Audrey R., "Truth-Finding in the Transitional Justice Process," in van der Merwe, Hugo, Baxter, Victoria, and Audrey R. Chapman (eds.), *Assessing the Impact of Transitional Justice: Challenges for Empirical Research* (Washington, DC: United States Institute of Peace, 2009), 91-113.

Chapman, Audrey R., and Ball, Patrick, "The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala," *Human Rights Quarterly* 23, no. 1, 1-43.

Collins Dictionary of Law, "actionable," (2006). <http://legal-dictionary.thefreedictionary.com/actionable> (last accessed 29 July 2018).

Commission for Historical Clarification, *Guatemala – Memory of Silence: Report of the Commission for Historical Clarification (Conclusions and Recommendations)*, http://www.aaas.org/sites/default/files/migrate/uploads/mos_en.pdf (last accessed May 29, 2018).

Correlates of War Project, "History," <http://www.correlatesofwar.org/history> (last accessed 12 October 2018).

Crenzel, Emilio, "Argentina's National Commission on the Disappearance of Missing Persons: Contributions to Transitional Justice," *International Journal of Transitional Justice* 2, no. 2 (2008), 173-191.

Cryer, Robert, "Röling in Tokyo: A Dignified Dissenter," *Journal of International Criminal Justice* 8, no. 4 (2010), 1109-1126.

Daly, Erin, "Truth Skepticism: An Inquiry into the Value of Truth in Times of Transitions," *International Journal of Transitional Justice* 2, no. 1 (2008), 23-41.

Davidson, Arnold Ira (ed.), *Foucault and His Interlocutors* (Chicago, IL: University of Chicago Press, 1997).

Daston, Lorraine, "Warum sind Tatsachen kurz?," in Anke te Heesen, Barbara Büscher, Christoph Hoffmann, Hans-Christian von Herrmann (eds.), *Cut & Paste um 1900: Der Zeitungsausschnitt in den Wissenschaften* (Berlin, Germany: Kaleidoskopien, 2012), 132-144.

Deleuze, Gilles, *Nietzsche and Philosophy*, Translated by Hugh Tomlinson (New York, NY: Columbia University Press, 2006 [1962]).

Deleuze, Gilles, "A Portrait of Foucault," in Deleuze, Gilles, *Negotiations 1972-1990*, Translated by Martin Joughin (New York, NY: Columbia University Press, 1995 (1986)), 102-118.

Der Derian, James, "The Boundaries of Knowledge and Power in International Relations," in Der Derian, James, and Shapiro, Michael J. (eds.), *International/Intertextual Relations* (New York, NY: Lexington Books, 1989), 3-10.

Der Derian, James, and Shapiro, Michael J., "Preface and Acknowledgements," in Der Derian, James, and Shapiro, Michael J. (eds.), *International/Intertextual Relations* (New York, NY: Lexington Books, 1989), ix-xi.

Der Derian, James, *On Diplomacy* (Oxford, UK: Basil Blackwell, 1987).

Deringil, Selim, "'The Armenian Question Is Finally Closed': Mass Conversions of Armenians in Anatolia during the Hamidian Massacres of 1895-1897," *Comparative Studies in Society and History* 51, no. 2 (2009), 344-371.

Desrosières, Alain, *The Politics of Large Numbers: A History of Statistical Reasoning*, Translated by Camille Naish (Cambridge, MA: Harvard University Press, 1998 [1993]).

Dillon, Michael, Reid, Julian (eds.), *The Liberal Way of War: Killing to Make a Living* (London, UK: Routledge, 2009).

Douglas, Lawrence, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (New Haven, CT: Yale University Press, 2001).

Durand, André, "Gustave Moynier and the Peace Societies," *International Review of the Red Cross* 36, no. 314 (1996), 532-550

Edkins, Jenny, and Zehfuss, Maja, "Introduction," in Edkins, Jenny, and Zehfuss, Maja (eds.), *Global Politics: A New Introduction* (London, UK: Routledge, 2009), 1-19.

Elster, Jon, "Justice, Truth, Peace," *Nomos* 51 (2012), 78-97.

Enloe, Cynthia, *The Curious Feminist: Searching for Women in a New Age of Empire* (Berkeley, CA: University of California Press, 2004).

Forsythe, David P., *Human Rights in International Relations*, 3rd ed. (Cambridge, UK: Cambridge University Press, 2012).

Foucault, Michel, *Lectures on the Will to Know: Lectures at the Collège de France, 1970-1971*, Translated by Graham Burchell (Basingstoke, UK: Palgrave Macmillan, 2011).

Foucault, Michel, *Society Must be Defended: Lectures at the Collège de France, 1975-1976*, Translated by David Macey (London, UK: Penguin Books, 2004 [1997]).

Foucault, Michel, *Die Wahrheit und die juristischen Formen*, Translated by Michael Bischoff (Frankfurt a.M., Germany: Suhrkamp, 2003 [1973]).

Foucault, Michel, "Nietzsche, Genealogy, History," in Rabinow, Paul, Rose, Nikolas (eds.), *The Essential Foucault* (New York, NY: New Press, 2003 [1971]), 76-100.

Foucault, Michel, *Fearless Speech*, Edited by Joseph Pearson (Los Angeles, CA: semiotext(e), 2001 [1983]).

Foucault, Michel, *The Archaeology of Knowledge*, translated by A. M. Sheridan Smith (London, UK: Tavistock Publications 2000 [1969]).

Foucault, Michel, *The History of Sexuality, Vol. 1: The Will to Knowledge*, Translated by Robert Hurley (London, UK: Penguin Books, 1998 [1978]).

Foucault, Michel, "What is Enlightenment?," in Foucault, Michel, *Essential Works, Volume 1: Ethics, Subjectivity, and Truth*, Edited by Paul Rabinow, Translated by Robert Hurley et al. (New York, NY: New Press, 1997 [1994]), 303-320.

Foucault, Michel, "Questions of Method," in Foucault, Michel, *Essential Works, Volume 3: Power*, Edited by James Faubion, Translated by Robert Hurley et al. (London, UK: Penguin Books, 1994), 223-238

Foucault, Michel, *The Order of Things: An Archaeology of the Human Sciences* (New York, NY: Vintage Books, 1994 [1970]).

Foucault, Michel, "Truth and the Juridical Forms," in Foucault, Michel, *Essential Works, Volume 3: Power*, Edited by James Faubion, Translated by Robert Hurley et al. (London, UK: Penguin Books, 1994), 1-89.

Foucault, Michel, *Discipline and Punish: The Birth of the Prison*, Translated by Allen Lane (London, UK: Penguin, 1991 [1975]).

Foucault, Michel, "Practicing Criticism," in Foucault, Michel, *Politics, Philosophy, Culture: Interviews and Other Writings, 1977-1984*, Translated by Alan Sheridan et al. (London, UK: Routledge, 1990 [1988]), 152-156.

Foucault, Michel, *The History of Sexuality, Vol. 2: The Use of Pleasure*, Translated by Robert Hurley (New York, NY: Vintage Books, 1990 [1985]).

Foucault, Michel, "The Order of Discourse," in Young, Robert J. C. (ed.), *Untying the Text: A Post-Structuralist Reader* (London, UK: Routledge, 1981), 48-78.

Foucault, Michel, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*, Edited by Colin Gordon, Translated by Colin Gordon, Leo Marshall, John Mepham, Kate Soper (New York, NY: Pantheon Books, 1980).

Foucault, Michel, "Power, Moral Values, and the Intellectual, an interview with Michael Bess," *History of the Present* 4 (1980).

Freidel, Frank, "The Teacher and His Students," *Wisconsin Magazine of History* 66, no. 2 (1982-1983).

Frevert, Ute, "German conceptions of war, masculinity and femininity in the long nineteenth century," in Colvin, Sarah, and Watanabe-O'Kelly, Helen (eds.), *Women and Death 2: Warlike Women in the German Literary and Cultural Imagination since 1500* (Rochester, NY: Camden House, 2009), 169-185.

Frevert, Ute, *Men of Honour: A Social and Cultural History of the Duel* (Cambridge, UK: Polity Press, 1995).

Frichova, Magdalena, *Transitional Justice and Georgia's Conflicts: Breaking the Silence* (New York, NY: International Center for Transitional Justice, 2009).

Friedman, Rebekka, *Competing Memories: Truth and Reconciliation in Sierra Leone and Peru* (Cambridge, UK: Cambridge University Press, 2017).

- Friedrichs, Jörg, and Kratochwil, Friedrich, "On Acting and Knowing: How Pragmatism Can Advance International Relations Research and Methodology," *International Organization* 63, no. 4 (2009), 701-731.
- Futamura, Madoka, *War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy* (Abingdon, UK: Routledge, 2008).
- George, Jim, *Discourses of Global Politics: A Critical (Re)Introduction to International Relations* (Boulder, CO: Lynne Rienner, 1994).
- Gevers, Christopher, "International criminal law and individualism: An African perspective," in Schwöbel, Christina (ed.), *Critical Approaches to International Criminal Law: An Introduction* (Abingdon, UK: Routledge, 2014), 221-245.
- Goltermann, Svenja, *Opfer – Die Wahrnehmung von Krieg und Gewalt in der Moderne* (Frankfurt a.M., Germany: S. Fischer, 2017).
- Gordon, Colin, "Introduction," in Foucault, Michel, *Essential Works, Volume 3: Power*, Edited by James Faubion (London, UK: Penguin Books, 1994), xi-xli.
- Grawert, Elke, Andrä, Christine, *Oil Investment and Conflict in Upper Nile State, South Sudan* (Bonn, Germany: BICC, 2013).
- Graybill, Lyn S., *Truth and Reconciliation in South Africa: Miracle or Model?* (Boulder, CO: Lynne Rienner, 2002).
- Gregory, Donna U., "Foreword," in Der Derian, James, and Shapiro, Michael J. (eds.), *International/Intertextual Relations* (New York, NY: Lexington Books, 1989), xiii-xxi.
- Griffin, Michael, "The Great War Photographs: Constructing Myths of History and Photojournalism," in Hardt, Hanno, and Brennen, Bonnie (eds.), *Picturing the Past: Media, History and Photography* (Urbana, IL: University of Illinois Press, 1999), 122-157.
- Griole, Gaston, "Communication relative a l'influence de la dernière guerre sur les progrès du droit des gens," *Bulletin de la Société de Législation Comparée* 3, no. 2 (1872), 26-47.
- Guignon, Charles, "Williams and the Phenomenological Tradition," in Callcut, Daniel (ed.), *Reading Bernard Williams* (Abingdon, UK: Routledge, 2003), 166-188.
- Gutting, Gary, *Foucault: A Very Short Introduction* (Oxford, UK: Oxford University Press, 2005).
- Guzzini, Stefano, "A Reconstruction of Constructivism in International Relations," *European Journal of International Relations* 6, no. 2 (2000), 147-182.
- Haack, Suzan, *Evidence Matters: Science, Proof and Truth in the Law* (Cambridge, UK: Cambridge University Press, 2014).
- Habermas, Jürgen, *The Philosophical Discourse of Modernity*, Translated by Frederick Lawrence (Cambridge, MA: MIT Press, 1987 [1985]).
- Hacking, Ian, "'Language, Truth and Reason' 30 years later," *Studies in History and Philosophy of Science* 43, no. 4 (2012), 599-609.

- Hacking, Ian, *Historical Ontology* (Cambridge, MA: Harvard University Press, 2004).
- Hacking, Ian, *The Social Construction of What?* (Cambridge, MA: Harvard University Press, 1999).
- Hacking, Ian, "The Looping Effects of Human Kinds," in Sperber, Dan, Premack, David, and Premack, Ann (eds.), *Causal Cognition: A Multi-Disciplinary Approach* (Oxford, UK: Clarendon Press, 1995), 351-394.
- Hacking, Ian, "Language, Truth and Reason," in Hollis, Martin, and Lukes, Steven (eds.), *Rationality and Relativism* (Oxford, UK: Blackwell, 1980), 48-66.
- Hallissy, Margaret, *Venomous Woman* (New York, NY: Greenwood Press, 1987).
- Hamati-Ataya, Inanna, "Reflectivity, Reflexivity, Reflexivism: IR's 'Reflexive Turn' – and Beyond," *European Journal of International Relations* 19, no. 4 (2012), 669-694.
- Hamilton, Scott, "A Genealogy of Metatheory in IR: How 'Ontology' Emerged from the Inter-Paradigm Debate," *International Theory* 9, no. 1 (2016), 136-170.
- Hansen, Lene, *Security as Practice: Discourse Analysis and the Bosnian War* (Abingdon, UK: Routledge, 2006).
- Hawkesworth, Mary, "Contending Conceptions of Science and Politics: Methodology and the Constitution of the Political," in Yanow, Dvora, and Schwartz-Shea, Peregrine (eds.), *Interpretation and Method: Empirical Research Methods and the Interpretive Turn* (London, UK: M.E. Sharpe, 2006), 27-49.
- Hayner, Priscilla, *Unspeakable Truths: Facing the Challenges of Truth Commissions* (London, UK: Routledge, 2001).
- Hayner, Priscilla, "Fifteen Truth Commissions – 1974 to 1994: A Comparative Study," *Human Rights Quarterly* 16, no. 4 (1994), 597-655.
- te Heesen, Anke, *The Newspaper Clipping: A Modern Paper Object* (Manchester, UK: Manchester University Press, 2014).
- Hellmann, Gunther (ed.), "The Forum: Pragmatism and International Relations," *International Studies Review* 11, no. 3 (2009), 638-662.
- Hilberg, Raoul, "I Was Not There," in Berel Lang (ed.), *Writing and the Holocaust* (New York, NY: Holmes & Meier, 1988), 17-25.
- Hobson, John, *The Eurocentric Conception of World Politics: Western International Theory, 1760-2010* (Cambridge, UK: Cambridge University Press, 2012).
- Hollis, Martin, and Smith, Steve, *Explaining and Understanding International Relations* (Oxford, UK: Oxford University Press, 1990).
- von Holtzendorff, Franz, "Letter to Gustave Moynier, 25 February 1872," in Rolin-Jaequemyns, Gustave, "Note sur le Projet de M. Moynier, relatif à l'Établissement d'une Institution Judiciaire Internationale, Protectrice de la Convention, avec lettres de MM. Lieber, Ach. Morin, de Holtzendorff et Westlake," *Revue de Droit International et de Législation Comparée* 4 (1872), 332-334.

Howard, Michael, *The Invention of Peace and the Reinvention of War* (London, UK: Profile Books, 2002).

Hutchings, Kimberly, "War and Moral Stupidity," *Review of International Studies* 44, no. 1 (2017), 83-100.

Inayatullah, Naeem (ed.), *Autobiographical International Relations: I, IR* (London, UK: Routledge, 2010).

International Criminal Court, "Situation in Georgia: Decision on the Prosecutor's request for authorization of an investigation," ICC-01/15, 27 January 2016.

Isaacs, Anita, "At War with the Past? The Politics of Truth Seeking in Guatemala," *International Journal of Transitional Justice* 4, no. 2 (2010), 251-274.

Israël, Liora, and Mouralis, Guillaume (eds.), *Dealing with Wars and Dictatorships: Legal Concepts and Categories in Action* (The Hague, Netherlands: T.M.C. Asser Press, 2014).

Jabri, Vivienne, *War and the Transformation of Global Politics* (Basingstoke, UK: Palgrave Macmillan, 2007).

Jackson, John D., and Summers, Sarah J., *The Internationalisation of Criminal Evidence: Beyond the Common Law and Civil Law Traditions* (Cambridge, UK: Cambridge University Press, 2012).

Jackson, Patrick Thaddeus, "Must International Studies Be A Science?," *Millennium: Journal of International Studies* 43, no. 3 (2015), 946-965.

Jackson, Patrick Thaddeus, *The Conduct of Inquiry in International Relations: Philosophy of science and its implications for the study of world politics* (London, UK: Routledge, 2011).

Jasanoff, Sheila, "The Idiom of Co-Production," in Jasanoff, Sheila (ed.), *States of Knowledge: The Co-Production of Science and Social Order* (London, UK: Routledge, 2004), 1-12.

Jeffery, Renée, and Kim, Hun Joon, "New Horizons: Transitional Justice in the Asia-Pacific," in Jeffery, Renée, and Kim, Hun Joon (eds.), *Transitional Justice in the Asia-Pacific* (Cambridge, UK: Cambridge University Press, 2014), 1-32.

Joas, Hans, and Knöbl, Wolfgang, *War in Social Thought*, Translated by Alex Skinner (Princeton, NJ: Princeton University Press, 2012).

Joas, Hans, and Knöbl, Wolfgang, *Kriegsverdrängung: Ein Problem in der Geschichte der Sozialtheorie* (Frankfurt a.M., Germany: Suhrkamp, 2008).

Kei, U., "Pal's 'Dissentient Judgment' reconsidered: Some notes on postwar Japan's responses to the opinion," *Japan Review* 19 (2007), 215-224.

Keohane, Robert, "International Institutions: Two Approaches," *International Studies Quarterly* 32, no. 4 (1988), 379-396.

Kévonian, Dzovinar, "L'enquête, le délit, la preuve: Les 'atrocités' balkanique de 1912-1913 à l'épreuve du droit de la guerre," *Le Mouvement Social* 222, no. 1 (2008), 13-40.

Kiersey, Nicholas J., and Stokes, Doug (eds.), *Foucault and International Relations: New Critical Engagements* (Oxford, UK: Routledge, 2011).

Kinsella, Helen, *The Image Before the Weapon: A Critical History of the Distinction between Combatant and Civilian* (Ithaca, NY: Cornell University Press, 2011).

Kiss, Elizabeth, "Moral Ambition within and beyond Political Constraints," in Rotberg, Robert I., and Thompson, Dennis (eds.), *Truth V. Justice: The Morality of Truth Commissions* (Princeton, NJ: Princeton University Press, 2000), 68-99.

Khan, Adil Hasen, "International lawyers in the aftermath of disasters: Inheriting from Radhabinod Pal and Upendra Baxi," *Third World Quarterly* 37, no. 11 (2016), 2061-2079.

Koopman, Colin, "Ways of Doing Genealogy: Inquiry after Foucault. A Group Interview with Verena Erlenbusch, Simon Ganahl, Robert W. Gehl, Thomas Nail and Perry Zurn," *Le foucauldien* 3, no. 1 (2017).

Koopman, Colin, *Genealogy as Critique: Foucault and the Problems of Modernity* (Bloomington, IN: Indiana University Press, 2013).

Koopman, Colin, and Matza, Tomas, "Putting Foucault to Work: Analytic and Concept in Foucaultian Inquiry," *Critical Inquiry* 39, no. 4 (2013), 817-840.

Kopelman, Elizabeth S., "Ideology and International Law: The Dissent of the Indian Justice at the Tokyo War Crimes Trial," *New York University Journal of International Law and Politics* 23, no. 3 (1991), 373-444.

Koselleck, Reinhart, "Wozu noch Historie?," *Historische Zeitschrift* 212, no. 1 (1971), 1-18.

Koskenniemi, Martti, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870-1960* (Cambridge, UK: Cambridge University Press, 2010 [2001]).

Knutsen, Torbjørn L., "The Origins of International Relations: Idealists, Administrators and the Institutionalization of a New Science," in Gofas, Andreas, Hamati-Ataya, Inanna, and Onuf, Nicholas (eds.), *The SAGE Handbook of the History, Philosophy and Sociology of International Relations* (London, UK: SAGE, 2018), 193-207.

Kreß, Claus, "On the Activation of ICC Jurisdiction over the Crime of Aggression," *Journal of International Criminal Justice* 16, no. 1 (2018), 1-17.

Krever, Tor, "International Criminal Law: An Ideology Critique," *Leiden Journal of International Law* 26, no. 3 (2013), 701-723.

Kurki, Milja, Wight, Colin, "International Relations and Social Science," in Dunne, Tim, Kurki, Milja, and Smith, Steve (eds.), *International Relations Theories: Discipline and Diversity* (Oxford, UK: Oxford University Press, 2nd ed., 2010), 13-33.

Lacatus, Cora, Schade, Daniel, and Yao, Yuan (Joanne), "Quo vadis IR: Method, Methodology and Innovation," *Millennium: Journal of International Studies* 43, no. 3 (2015), 767-778.

Lacey, Nicola, "In Search of the Responsible Subject: History, Philosophy and Social Sciences in Criminal Law Theory," *Modern Law Review* 64, no. 3 (2001), 350-371.

Lapid, Yosef, "The third debate: On the prospects of international theory in a post-positivist era," *International Studies Quarterly* 33, no. 3 (1989), 235-254.

Laplante, Lisa, and Theidon, Kimberly, "Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru," *Human Rights Quarterly* 29, no. 1 (2007), 228-250.

Law, John, *After Method: Mess in Social Science Research* (Abingdon, UK: Routledge, 2004).

Leebaw, Bronwyn, "The Irreconcilable Goals of Transitional Justice," *Human Rights Quarterly* 30, no. 1, 95-118.

Lewis, Mark, *The Birth of the New Justice: The Internationalization of Crime and Punishment, 1919-1950* (Oxford, UK: Oxford University Press, 2014).

Lieber, Francis, "Letter to Guillaume-Henri Dufour, 10 April 1872," in Rolin-Jaequemyns, Gustave, "Note sur le Projet de M. Moynier, relatif à l'Etablissement d'une Institution Judiciaire Internationale, Protectrice de la Convention, avec lettres de MM. Lieber, Ach. Morin, de Holtzendorff et Westlake," *Revue de Droit International et de Législation Comparée* 4 (1872), 330-332.

Lieber, Francis, *Instructions for the Government of Armies in the Field* (New York, NY: D. Van Nostrand, 1863).

Lisle, Debbie, "Energizing the International," in Acuto, Michele, and Curtis, Simon (eds.), *Reassembling International Theory: Assemblage Thinking and International Relations* (Basingstoke, UK: Palgrave, 2014), 68-74.

Littre, Émile, *Dictionnaire de la langue française, Tome 3* (Paris, France: Hachette, 1873).

Lobo-Guerrero, Luis, "Wondering as a Research Attitude," in Salter, Mark B., and Mutlu, Can E. (eds.), *Research Methods in Critical Security Studies: An Introduction* (London, UK: Routledge), 25-28.

Lutz, Ellen, "Transitional justice: Lessons Learned and the Road Ahead," in Roht-Arriaza, Naomi, and Mariezcurrena, Javier (eds.), *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* (Cambridge, UK: Cambridge University Press, 2006), 325-341.

Mackay, Joseph, and Laroche, Christopher David, "The conduct of history in International Relations: rethinking philosophy of history in IR theory," *International Theory* 9, no. 2, 203-236.

Mamdani, Mahmood, "Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)," *Diacritics* 32, no. 3-4 (2002), 33-59.

Mandler, George, *A History of Modern Experimental Psychology: From James and Wundt to Cognitive Science* (Cambridge, MA: MIT Press, 2007).

Martín Alcoff, Linda, "The Case for Coherence," in Lynch, Michael P. (ed.), *The Nature of Truth: Contemporary Perspectives* (Cambridge, MA: The MIT Press, 2001).

Mendeloff, David, "Truth-Seeking, Truth-Telling, and Post-Conflict Peacebuilding: Curb the Enthusiasm?," *International Studies Review* 6, no. 3 (2004), 355-380.

Mendez, Juan E., "Accountability for Past Abuses," *Human Rights Quarterly* 19, no. 2 (1997), 255-282.

van der Merwe, Hugo, Baxter, Victoria, and Chapman, Audrey R. (eds.), *Assessing the Impact of Transitional Justice: Challenges for Empirical Research* (Washington, DC: United States Institute of Peace, 2009).

Michail, Eugene, "Western Attitudes to War in the Balkans and the Shifting Meanings of Violence, 1912-91," *Journal of Contemporary History* 47, no. 2 (2012), 219-239.

Miller, Zinaida, "Effects of Invisibility: In Search of the 'Economic' in Transitional Justice," *International Journal of Transitional Justice* 2, no. 3 (2008), 266-291.

Milliken, Jennifer, "The Study of Discourse in International Relations: A Critique of Research and Methods," *European Journal of International Relations* 5, no. 2 (1999), 225-254.

Miner, Richard H., *Victor's Justice: The Tokyo War Crimes Trial* (Princeton, NJ: Princeton University Press, 1971).

Moon, Claire, "What One Sees and How One Files Seeing: Human Rights Reporting, Representation and Action," *Sociology* 46, no. 5 (2012), 876-890.

Moon, Claire, "Healing Past Violence: Traumatic Assumptions and Therapeutic Interventions in War and Reconciliation," *Journal of Human Rights* 8, no. 1 (2009), 71-91.

Morin, Achille, "Lettre à Gustave Moynier," 28 May 1872, in Rolin-Jaequemyns, Gustave, "Note sur le Projet de M. Moynier, relatif à l'Établissement d'une Institution Judiciaire Internationale, Protectrice de la Convention, avec lettres de MM. Lieber, Ach. Morin, de Holtzendorff et Westlake," *Revue de Droit International et de Législation Comparée* 4 (1872), 325-346.

Moyn, Samuel, *The Last Utopia: Human Rights in History* (Harvard, MA: Harvard University Press, 2010).

Moses, Jonathon W., and Knutsen, Torbjorn, *Ways of Knowing: Competing Methodologies in Social and Political Research* (London, UK: Palgrave Macmillan, 2007).

Mosse, George, *Confronting History: A Memoir* (Madison, WI: University of Wisconsin Press, 2000).

Moynier, Gustave, *Note sur la création d'une institution judiciaire internationale propre à prévenir et à réprimer les infractions à la Convention de Genève, lue au Comité international*

de secours aux militaires blessés dans sa séance du 3 janvier 1872 (Geneva, Switzerland: Soullier et Wirth, 1872).

Moynier, Gustave, *Étude sur la Convention de Genève pour l'amélioration du sort des militaires blessés dans les armées en campagne (1864 et 1868)* (Paris, France: Librairie de Joel Cherbuliez, 1870).

Murphy, Colleen, *A Moral Theory of Political Reconciliation* (Cambridge, UK: Cambridge University Press, 2010).

Nagy, Rosemary, "The Scope and Bounds of Transitional Justice and the Canadian Truth and Reconciliation Commission," *International Journal for Transitional Justice* 7, no. 1 (2013), 52-73.

Nagy, Rosemary, "Transitional Justice as a Global Project: Critical Reflections," *Third World Quarterly* 29, no. 2 (2008), 275-289.

Nauenberg, Saskia, "Spreading the truth: How truth commissions address human rights abuses in the world society," *International Sociology* 30, no. 6, 654-673.

Neal, Andrew, "Foucault in Guantánamo: Towards an Archaeology of the Exception," *Security Dialogue* 37, no. 1 (2006), 31-46.

Neff, Stephen C., *War and the Law of Nations: A General History* (Cambridge, UK: Cambridge University Press, 2005).

Neufeld, Mark, *The Restructuring of International Relations Theory* (Cambridge, UK: Cambridge University Press, 1995).

Neufeld, Mark, "Reflexivity and International Relations Theory," *Millennium: Journal of International Studies* 22, no. 1 (1993), 53-76.

Neumann, Cecilie Basberg, and Neumann, Iver B., "Uses of the Self: Two Ways of Thinking about Scholarly Situatedness and Method," *Millennium: Journal of International Studies* 43, no. 3 (2015), 798-819.

Neumann, Iver, "Poststructuralists Also Have a Duty of Methodological Care," *New Perspectives: Interdisciplinary Journal of Central & East European Politics and International Relations* 25, no. 3 (2017), 12-19.

Nietzsche, Friedrich, "Zur Genealogie der Moral," in Nietzsche, Friedrich, *Jenseits von Gut und Böse / Zur Genealogie der Moral*, Kritische Studienausgabe, Edited by Giorgio Colli, Mazzino Montinari (Munich, Germany: Deutscher Taschenbuch Verlag, 1999 [1887]).

Nietzsche, Friedrich, *On the Genealogy of Morals: A Polemic*, Translated with an Introduction and Notes by Douglas Smith (Oxford, UK: Oxford University Press, 1996 [1887]).

Ní Aoláin, Fionnuala, "Political Violence and Gender during Times of Transition," *Columbia Journal of Gender and Law* 15, no. 3 (2006), 829-849.

Nordin, Astrid H. M., and Öberg, Dan, "Targeting the Ontology of War: From Clausewitz to Baudrillard," *Millennium: Journal of International Studies* 43, no. 2 (2015), 392-410.

Norrie, Alan, *Crime, Reason and History: A Critical Introduction to Criminal Law*, 3rd ed. (Cambridge, UK: Cambridge University Press, 2014).

Olsen, Tricia D., Payne, Leigh A., and Reiter, Andrew G., "The Justice Balance – When Transitional Justice Improves Human Rights and Democracy," *Human Rights Quarterly* 32, no. 4 (2010), 980-1007.

Oksala, Johanna, *Foucault, Politics, Violence* (Evanston, IL: Northwestern University Press, 2012).

Onuf, Nicholas, "The Figure of Foucault and the Field of International Relations," in Bonditti, Philippe, Bigo, Didier, and Gros, Frédéric (eds.), *Foucault and the Modern International: Silences and Legacies for the Study of World Politics* (New York, NY: Palgrave Macmillan, 2017), 15-31.

Orford, Anne, "Commissioning the Truth," *Columbia Journal of Gender and Law* 15, no. 3 (2006), 851-883.

Osterhammel, Jürgen, *The Transformation of the World: A Global History of the Nineteenth Century* (Princeton, NJ: Princeton University Press, 2014).

Owens, Patricia, "Women and the History of International Thought," *International Studies Quarterly* 62, no. 3 (2018), 467-481.

Owens, Patricia, "Decolonizing Civil War," *Critical Analysis of Law* 4, no. 2 (2017), 160-169.

Östling, Johan, Larsson Heidenblad, David, Sandmo, Erling, Nilsson Hammar, Anna, and Nordberg, Kari H. (eds.), *Circulation of Knowledge: Explorations in the History of Knowledge* (Lund, Sweden: Nordic Academic Press, 2018).

Pal, Radhabinod, "Judgment of Mr. Justice Pal, member from India," in B. V. A. Röling, C. F. Rüter (eds.), *The Tokyo Judgment: The International Military Tribunal for the Far East (I.M.T.F.E.), 29 April 1946-12 November 1948, Vol. II* (Amsterdam, the Netherlands: APA University Press Amsterdam, 1977), 517-1040.

Parashar, Swati, "What war and 'war bodies' know about international relations," *Cambridge Review of International Affairs* 26, no. 4 (2013), 615-630.

Pham, Phuong, and Vinck, Patrick, "Empirical Research and the Development and Assessment of Transitional Justice Mechanisms," *International Journal of Transitional Justice* 1, no. 2 (2007), 231-248.

Pierce, Charles Sanders, *Collected Papers, Vol. 1-7* (Cambridge, MA: Harvard University Press, 1965).

Popkin, Margaret, and Roht-Arriaza, Naomi, "Truth as Justice: Investigatory Commissions in Latin America," *Law & Social Inquiry* 20, no. 1 (1994), 79-116.

Porter, Brian (ed.), *The Aberystwyth Papers: International Politics, 1919-1969* (Oxford, UK: Oxford University Press, 1972).

Price, Richard, *Chemical Weapons Taboo* (Ithaca, NY: Cornell University Press, 1997).

Price, Richard, and Reus-Smit, Christian, "Dangerous Liaisons? Critical International Theory and Constructivism," *European Journal of International Relations* 4, no. 3 (1998), 259-294.

Rabinow, Paul, "Dewey and Foucault: What's the Problem?," *Foucault Studies* 11 (2011), 11-19.

Rabinow, Paul, and Dreyfus, Hubert, *Michael Foucault: Beyond Structuralism and Hermeneutics*, 2nd ed. (Chicago, IL: University of Chicago Press, 1983).

Reus-Smit, Christian, and Snidal, Duncan, "Between Utopia and Reality: The Practical Discourses of International Relations," in Reus-Smit, Christian, and Snidal, Duncan (eds.), *The Oxford Handbook of International Relations* (Oxford, UK: Oxford University Press, 2008), 3-39.

Ricoeur, Paul, *Time and Narrative* (Chicago, IL: University of Chicago Press, Vol. 1-3, 1990 [1983]).

Richmond, Oliver P., *Peace in International Relations* (Abingdon, UK: Routledge, 2008).

Rodogno, Davide, *Against Massacre: Humanitarian Interventions in the Ottoman Empire, 1815-1914* (Oxford, UK: Oxford University Press, 2011).

Röling, Bert V. A., "Opinion of Mr. Justice Röling, member for the Netherlands," in Röling, B. V. A., and Rüter, C. F. (eds.), *The Tokyo Judgment: The International Military Tribunal for the Far East (I.M.T.F.E.), 29 April 1946-12 November 1948, Vol. II* (Amsterdam, the Netherlands: APA University Press Amsterdam, 1977), 1041-1143.

Rolin-Jaequemyns, Gustave, "De la Manière d'apprécier, au Point de Vue du Droit International, les Faits de la Dernière Guerre," *Revue de Droit International et de Législation Comparée* 4 (1972), 481-525.

Rolin-Jaequemyns, Gustave, *La guerre actuelle dans ses rapports avec le droit international, Extrait de la Revue de Droit international et de législation comparée, 4^e livraison 1870* (Gent, Belgium: I.-S. van Doosselaere, 1872).

Rolin-Jaequemyns, Gustave, "Note sur le Projet de M. Moynier, relatif à l'Établissement d'une Institution Judiciaire Internationale, Protectrice de la Convention, avec lettres de MM. Lieber, Ach. Morin, de Holtzendorff et Westlake," *Revue de Droit International et de Législation Comparée* 4 (1872), 325-346.

Rorty, Richard, *Consequences of Pragmatism: Essays, 1972-1980* (Minneapolis, MN: University of Minnesota Press, 1982).

Rotberg, Robert I., and Thompson, Dennis (eds.), *Truth V. Justice: The Morality of Truth Commissions* (Princeton, NJ: Princeton University Press, 2000).

Saar, Martin, "Genealogische Kritik," in Jaeggi, Rahel, Wesche, Tilo (eds.), *Was ist Kritik?* (Frankfurt a.M., Germany: Suhrkamp, 2013), 247-265.

Saar, Martin, *Genealogie als Kritik* (Frankfurt a.M., Germany: Suhrkamp, 2007).

Sabaratham, Meera, "The Liberal Peace? An Intellectual History of International Conflict Management, 1990-2010," in Susanna Campbell, David Chandler, Meera Sabaratham (eds.), *A Liberal Peace? The Problems and Practices of Peacebuilding* (London, UK: Zed Books, 2011), 13-30.

Sang, Mickael Ho Foui, "Justice Bernard (France)," in Tanaka, Yuki, McCormack, Timothy L. H., and Simpson, Gerry (eds.), *Beyond Victor's Justice? The Tokyo War Crimes Trial Revisited* (Leiden, The Netherlands: Martinus Nijhoff, 2011), 93-102.

Sarasin, Philipp, "Was ist Wissensgeschichte?," *Internationales Archiv für Sozialgeschichte der deutschen Literatur* 36, no. 1 (2011), 159-172.

Sassen, Saskia, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton, NJ: Princeton University Press, 2006).

Schaap, Andrew, *Political Reconciliation* (New York, NY: Routledge, 2005).

Schabas, William, "Amnesty, the Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone," *U.C. Davis Journal of International Law and Policy* 11, no. 1 (2004), 145-170.

Scharf, Michael P., "The Case for a Permanent International Truth Commission," *Duke Journal of Comparative and International Law* 7 (1997), 375-410.

Scheipers, Sibylle, *Unlawful Combatants: A Genealogy of the Irregular Fighter* (Oxford, UK: Oxford University Press, 2015).

Schmidt, Brian C., "On the History and Historiography of International Relations," in Carlsnaes, Walter, Risse, Thomas, and Simmons, Beth A. (eds.), *Handbook of International Relations* (London, UK: SAGE, 2002), 1-22.

Schmidt, Brian C., "Lessons from the Past: Reassessing the Interwar Disciplinary History of International Relations," *International Studies Quarterly* 42, no. 3 (2002), 433-459.

Schmidt, Brian C., *The Political Discourse of Anarchy: A Disciplinary History of International Relations* (Albany, NY: State University of New York Press, 1998).

Segesser, Daniel Marc, *Recht statt Rache oder Rache statt Recht? Die Ahndung von Kriegsverbrechen in der internationalen fachwissenschaftlichen Debatte 1872-1945* (Paderborn, Germany: Verlag Ferdinand Schöningh, 2007).

Sellers, Kirsten, *'Crimes Against Peace' and International Law* (Cambridge, UK: Cambridge University Press, 2015).

Shapin, Steven, *A Social History of Truth* (Chicago, IL: University of Chicago Press, 1994).

Shapiro, Michael J., "Textualizing Global Politics," in Der Derian, James, and Shapiro, Michael J. (eds.), *International/Intertextual Relations: Postmodern Readings of World Politics* (New York, NY: Lexington Books, 1989), 11-22.

Shepherd, Laura, "Activism in/and the Academy: Reflections on 'Social Engagement,'" *Journal of Narrative Politics* 5, no. 1 (2018), 45-56.

Shilliam, Robbie, "'Open the Gates Mek We Repatriate': Carribean Slavery, Constructivism, and Hermeneutic Tensions," *International Theory* 6, no. 2 (2014), 349-372.

Shilliam, Robbie, "Decolonising the Grounds of Ethical Inquiry: A Dialogue between Kant, Foucault and Glissant," *Millennium: Journal of International Studies* 39, no. 3 (2011), 649-665.

Shinko, Rosemary, "Agnostic Peace: A Postmodern Reading," *Millennium: Journal of International Studies* 36, no. 3 (2008), 473-491.

Sikkink, Kathryn, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York, NY: W.W. Norton, 2011).

Simpson, Gerry, "Writing the Tokyo Trial," in Tanaka, Yuki, McCormack, Timothy L. H., and Simpson, Gerry (eds.), *Beyond Victor's Justice? The Tokyo War Crimes Trial Revisited* (Leiden, The Netherlands: Martinus Nijhoff, 2011), 23-34.

Simpson, Gerry, *Law, War, and Crime: War Crimes, Trials and the Reinvention of International Law* (Cambridge, UK: Polity Press, 2007).

Skinner, Quentin, *The Foundations of Modern Political Thought* (Cambridge, UK: Cambridge University Press, 1978).

Smith, Daniel, "The Legacy of Nuremberg: Sustaining Human Rights," *Cornell Law Forum* 25, no. 3 (1999).

Smith, Steve, "Introduction: Diversity and Disciplinarity in International Relations Theory," in Dunne, Tim, Kurki, Milja, and Smith, Steve (eds.), *International Relations Theories: Discipline and Diversity* (Oxford, UK: Oxford University Press, 2nd ed., 2010), 1-12.

Sriram, Chandra Lekha, "Transitional Justice and Peacebuilding," in Sriram, Chandra Lekha, and Pillay, Suren (eds.), *Peace versus Justice? The Dilemmas of Transitional Justice in Africa* (Suffolk: James Currey, 2011).

Stoler, Ann Laura, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton, NJ: Princeton University Press, 2002).

Strachan, Hew, and Scheipers, Sibylle (eds.), *The Changing Character of War* (Oxford, UK: Oxford University Press, 2011).

Sylvest, Caspar, "'Our passion for legality': international law and imperialism in late nineteenth-century Britain," *Review of International Studies* 34, no. 3 (2008), 403-423.

Takeshi, Nakajima, "The Tokyo Tribunal, Justice Pal and the Revisionist Distortion of History," *The Asia-Pacific Journal* 44, no. 3, 2011), 1-20.

Teitel, Ruti, *Transitional Justice Globalized* (Oxford, UK: Oxford University Press, 2014).

Teitel, Ruti, "Editorial Note – Transitional Justice Globalized," *International Journal of Transitional Justice* 2, no. 1 (2008), 1-4.

Teitel, Ruti, "Transitional Justice Genealogy," *Human Rights Journal* 16 (2003), 69-94.

Thakur, Vineet, Davis, Alexander E., and Vale, Peter, "Imperial Mission, 'Scientific' Method: an Alternative Account of the Origins of IR," *Millennium: Journal of International Studies* 46, no. 1 (2017), 3-23.

Theidon, Kimberly, "Editorial Note," *International Journal of Transitional Justice* 3, no. 3 (2009), 295-300.

Tidy, Joanna, "Visual regimes and the politics of war experience: Rewriting war 'from above' in WikiLeaks' 'Collateral Murder,'" *Review of International Studies* 43, no. 1 (2016), 95-111.

Timm, Uwe, *In My Brother's Shadow*, Translated by Anthea Bell (London, UK: Bloomsbury, 2005).

Timm, Uwe, *Am Beispiel meines Bruders* (Cologne, Germany: Kiepenheuer & Witsch, 2003).

Todorova, Maria, *Imagining the Balkans*, updated ed. (Oxford, UK: Oxford University Press, 2009 [1997]).

Totani, Yuma, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (Cambridge, MA: Harvard University Press, 2008).

Trix, Frances, "Peace-mongering in 1913: The Carnegie International Commission of Inquiry and Its Report on the Balkan Wars," *First World War Studies* 5, no. 2 (2014), 147-162.

Truth and Reconciliation Commission of South Africa, *Truth and Reconciliation Commission of South Africa Report* (Cape Town, South Africa: Juta & Co, 1998).

United Nations, "Right to the Truth," A/RES/68/165 (2014).

United Nations, "Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence," A/HRC/RES/18/7 (2011).

United Nations, "Promotion and Protection of Human Rights: Study on the Right to Truth," E/CN.4/2006/91 (2006).

United Nations, "The rule of law and transitional justice in conflict and post-conflict societies," S/2004/616* (2004).

Urla, Jacqueline, and Terry, Jennifer, "Introduction: Mapping Embodied Deviance," in Urla, Jacqueline, and Terry, Jennifer (eds.), *Deviant Bodies* (Bloomington, IN: Indiana University Press, 1996), 1-18.

Varadarajan, Latha, "The trials of imperialism: Radhabinod Pal's dissent at the Tokyo tribunal," *European Journal of International Relations* 21, no. 4 (2015), 793-815.

Vec, Miloš, "Verrechtlichung internationaler Streitbeilegung im 19. Und 20. Jahrhundert? Beobachtungen und Fragen zu Strukturen völkerrechtlicher Konfliktaustragung," in Dauchy, Serge, and Vec, Miloš (eds.), *Les conflits entre peuples: De la résolution libre à la résolution imposée* (Baden-Baden, Germany: Nomos, 2011), 1-21.

Vec, Miloš, "Sichtbar/Unsichtbar: Entstehung und Scheitern von Kriminologie und Kriminalistik als semiotische Disziplinen," in Habermas, Rebekka, and Schwerthoff, Gerd (eds.), *Verbrechen im Blick: Perspektiven der neuzeitlichen Kriminalitätsgeschichte* (Frankfurt, Germany: Campus, 2009), 383-414.

Verdebout, Agatha, "The Contemporary Discourse on the Use of Force in the Nineteenth Century: A Diachronic and Critical Analysis," *Journal on the Use of Force and International Law* 1, no. 2 (2014), 223-246.

Veyne, Paul, "Foucault Revolutionizes History," in Davidson, Arnold Ira (ed.), *Foucault and His Interlocutors* (Chicago, IL: University of Chicago Press, 1997), 146-182.

Vinjamuri, Leslie, and Snyder, Jack, "Advocacy and Scholarship in the Study of International War Crime Tribunals and Transitional Justice," *Annual Review of Political Science* 7 (2004), 345-362.

Vitalis, Robert, *White World Order, Black Power Politics: The Birth of American International Relations* (Ithaca, NY: Cornell University Press, 2017).

Vucetic, Srdjan, "Genealogy as a Research Tool in International Relations," *Review of International Studies* 37, no. 3 (2011), 1295-1312.

Walzer, Michael, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York, NY: Basic Books, 2006).

Weber, Cynthia, *Queer International Relations: Sovereignty, Sexuality and the Will to Knowledge* (Oxford, UK: Oxford University Press, 2016).

Weber, Cynthia, *Simulating Sovereignty: Intervention, the State and Symbolic Exchange* (Cambridge, UK: Cambridge University Press, 1995).

Weinke, Annette, *Gewalt, Geschichte, Gerechtigkeit* (Göttingen, Germany: Wallstein Verlag, 2016).

Westlake, John, "Letter to Guillaume-Henri Defour, February 1872," in Rolin-Jaequemyns, Gustave, "Note sur le Projet de M. Moynier, relatif à l'Établissement d'une Institution Judiciaire Internationale, Protectrice de la Convention, avec lettres de MM. Lieber, Ach. Morin, de Holtzendorff et Westlake," *Revue de Droit International et de Législation Comparée* 4 (1872), 334-335.

Wetzell, Richard F., *Inventing the Criminal: A History of German Criminology, 1880-1945* (Chapel Hill, NC: University of North Carolina Press, 2000).

Winter, Jay, *War Beyond Words: Languages of Remembrance from the Great War to the Present* (Cambridge, UK: Cambridge University Press, 2017).

White, Hayden, *Metahistory: The Historical Imagination in Nineteenth-Century Europe* (Baltimore, MD: Johns Hopkins University Press, 2014 [1973]).

Yanow, Dvora, "Neither Rigorous Nor Objective? Interrogating Criteria for Knowledge Claims in Interpretive Science," in Yanow, Dvora, and Schwartz-Shea, Peregrine (eds.), *Interpretation and Method: Empirical Research Methods and the Interpretive Turn* (London, UK: M.E. Sharpe, 2006), 67-88.

Yanow, Dvora, "Thinking Interpretively: Philosophical Presuppositions and the Human Sciences," in Yanow, Dvora, Schwartz-Shea, Peregrine (eds.), *Interpretation and Method: Empirical Research Methods and the Interpretive Turn* (London, UK: M.E. Sharpe, 2006), 5-26.

Zambernardi, Lorenzo, "Excavating Soldier Deaths: A Study of Changing Burial Practices," *International Political Sociology* 11, no. 3 (2017), 292-307.

Zehfuss, Maja, *War and the Politics of Ethics* (Oxford, UK: Oxford University Press, 2018).

Zehfuss, Maja, "Hierarchies of Grief and the Possibility of War: Remembering UK Fatalities in Iraq," *Millennium: Journal of International Studies* 38, no. 2 (2009), 1-22.

Zolo, Danilo, *Victor's Justice: From Nuremberg to Baghdad* (New York, NY: Verso, 2009).